

**INFORMATION TO OFFERORS OR QUOTERS
SECTION A - COVER SHEET**

*Form Approved
OMB No. 9000-0002
Expires Oct 31, 2004*

The public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (9000-0002), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person will be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE ADDRESS IN BLOCK 4 BELOW.

1. SOLICITATION NUMBER	2. (X one)	3. DATE/TIME RESPONSE DUE
	<input type="checkbox"/> a. INVITATION FOR BID (IFB)	
	<input type="checkbox"/> b. REQUEST FOR PROPOSAL (RFP)	
	<input type="checkbox"/> c. REQUEST FOR QUOTATION (RFQ)	

INSTRUCTIONS

NOTE: The provision entitled "Required Central Contractor Registration" applies to most solicitations.

1. If you are not submitting a response, complete the information in Blocks 9 through 11 and return to the issuing office in Block 4 unless a different return address is indicated in Block 7.
2. Offerors or quoters must include full, accurate, and complete information in their responses as required by this solicitation (including attachments). "Fill-ins" are provided on Standard Form 18, Standard Form 33, and other solicitation documents. Examine the entire solicitation carefully. The penalty for making false statements is prescribed in 18 U.S.C. 1001.
3. Offerors or quoters must plainly mark their responses with the Solicitation Number and the date and local time for bid opening or receipt of proposals that is in the solicitation document.
4. Information regarding the timeliness of response is addressed in the provision of this solicitation entitled either "Late Submissions, Modifications, and Withdrawals of Bids" or "Instructions to Offerors - Competitive Acquisition".

4. ISSUING OFFICE <i>(Complete mailing address, including ZIP Code)</i>	5. ITEMS TO BE PURCHASED <i>(Brief description)</i>

6. PROCUREMENT INFORMATION <i>(X and complete as applicable)</i>	
<input type="checkbox"/> a. THIS PROCUREMENT IS UNRESTRICTED	
<input type="checkbox"/> b. THIS PROCUREMENT IS _____ % SET-ASIDE FOR SMALL BUSINESS. THE APPLICABLE NAICS CODE IS: _____	
<input type="checkbox"/> c. THIS PROCUREMENT IS _____ % SET-ASIDE FOR HUB ZONE CONCERNS. THE APPLICABLE NAICS CODE IS: _____	
<input type="checkbox"/> d. THIS PROCUREMENT IS RESTRICTED TO FIRMS ELIGIBLE UNDER SECTION 8(a) OF THE SMALL BUSINESS ACT.	

7. ADDITIONAL INFORMATION

8. POINT OF CONTACT FOR INFORMATION			
a. NAME <i>(Last, First, Middle Initial)</i>		b. ADDRESS <i>(Include Zip Code)</i>	
c. TELEPHONE NUMBER <i>(Include Area Code and Extension)</i>	d. E-MAIL ADDRESS		

9. REASONS FOR NO RESPONSE <i>(X all that apply)</i>			
<input type="checkbox"/> a. CANNOT COMPLY WITH SPECIFICATIONS	<input type="checkbox"/>	<input type="checkbox"/> d. DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED	
<input type="checkbox"/> b. UNABLE TO IDENTIFY THE ITEM(S)	<input type="checkbox"/>	<input type="checkbox"/> e. OTHER <i>(Specify)</i>	
<input type="checkbox"/> c. CANNOT MEET DELIVERY REQUIREMENT	<input type="checkbox"/>		

10. MAILING LIST INFORMATION <i>(X one)</i>			
WE <input type="checkbox"/> DO <input type="checkbox"/> DO NOT DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE INVOLVED.			
11a. COMPANY NAME		b. ADDRESS <i>(Include Zip Code)</i>	
c. ACTION OFFICER			
(1) TYPED OR PRINTED NAME <i>(Last, First, Middle Initial)</i>		(2) TITLE	
(3) SIGNATURE			(4) DATE SIGNED <i>(YYYYMMDD)</i>

Simply complete and return the original and one (1) copy of the certification package, technical data, and past performance as described in Clause L201.02 and Clause L205). Your price must be inserted in Clause B34.01 in the Offeror Submission Package. **Your offer should include price per barrel per year based on fill capacity for base and option years.** The Line Item 1001 price must include any G&A and profit associated with ***all line items***. Proposal prices that are unrealistically high or low may be considered an indication of a lack of understanding of the solicitation requirements.

B. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentations are neither necessary nor wanted.

C. Unless you specifically state otherwise, your offer is assumed to accept all terms and conditions of this solicitation. Any exceptions to any part of this solicitation must be specifically identified in a cover letter to your proposal.

D. The Government intends to evaluate proposals and award a contract after written or oral discussions with all responsible offerors that submit proposals within the competitive range (see Clause L2.05-8). The source selection decision will be based on a combination of operational capability, past performance, price and subcontracting procedures/intentions (see Clause M2.13).

E. Care should be taken to mail correspondence relating to this solicitation or resulting contract to the appropriate office as indicated in the applicable clauses.

F. **Notice:** Any contract awarded to a Contractor who, at the time of award was suspended, debarred, ineligible for receipt of contract with Government Agencies or in receipt of a notice of proposed debarment from any Government Agency, is voidable at the option of the Government.

G. All offerors must include the DUNS number in the block with its name and address on the cover page of its offer (see Clause K1.06).

H. For clarification, explanation, or additional information contact Beverly Williams at 703-767-9348 or by email at bjwilliams@desc.dla.mil.

I. Any questions regarding **Small and Small Disadvantaged Business** should be directed to Ms. Kathy S. Williams, Small Business Specialist, at 703-767-9465.

FOLD

FOLD

FROM

AFFIX
STAMP
HERE

SOLICITATION NUMBER	
DATE (YYYYMMDD)	LOCAL TIME

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		▶	RATING	PAGE 1 OF 107 PAGES
2. CONTRACT NUMBER	3. SOLICITATION NUMBER SP0600-02-R-0094	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED August 21, 2002	6. REQUISITION/PURCHASE NUMBER SP0600-03-0479	
7. ISSUED BY Defense Energy Support Center 8725 John J. Kingman Road, Suite 2945 Ft. Belvoir, VA 22060-6222		CODE SP0600	8. ADDRESS OFFER TO (If other than Item 7) ATTN: BID CUSTODIAN, DESC-CPC, RM 3815 Defense Energy Support Center, 8725 John J. Kingman Road, Suite 4950, Fort Belvoir, VA 22060-6222 (Fax: 703-767-8506)			

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 1 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in DESC-CPC, Room 3815 until 1500 local time September 23, 2002
(Hour) (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ▶	A. NAME Beverly J. Williams	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS
		AREA CODE (703)	NUMBER 767-9348	EXT. bjwilliams@desc.dla.mil

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<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 180 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8) ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)	
15B. TELEPHONE NUMBER			17. SIGNATURE	18. OFFER DATE
AREA CODE	NUMBER	EXT.		
<input type="checkbox"/> 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.				

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)) <input type="checkbox"/> 41 U.S.C. 253(c) ()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ▶	ITEM
24. ADMINISTERED BY (If other than Item 7) CODE		25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)		27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	
		28. AWARD DATE	

IMPORTANT - Award will be made on this form, or on Standard Form 26, or by other authorized official written notice.

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SECTION B – SUPPLIES/SERVICES AND PRICES/COST

B34.01 SERVICES TO BE FURNISHED AND PRICES (DESC FEB 1991)

The services to be furnished during the period specified herein and the unit prices are as follows:

The following terms and conditions are applicable to obtain the necessary services and facilities to receive, store, and ship one grade of Government-owned product (JP8) in the area of Doraville and Bremen, GA beginning 1 October 2003 for a five year multi-year contract with three, five-year options to renew.

Terms and conditions applicable to the requirement are as follows:

1. **AREA OF CONSIDERATION:** Defense Fuel Support Point services are required in the area of *Doraville, GA/Bremen, GA*, with a **Contractor-furnished connection to the Plantation Common Carrier Pipeline System and/or the Colonial Common Carrier Pipeline Systems.**

2. **TANKAGE REQUIRED:** 104,000 barrels shell capacity (99,000 barrels fill capacity). A minimum of two tanks is required, interconnected and isolated from other facilities and products handled within the tank farm. Clause L116.01, Data Required, applies.

3. **ESTIMATED THROUGHPUT:** 600,000 barrels for each 12-month contract period. Throughput is computed as follows: *receipts plus issues, divided by two*. The estimated throughput quantity does **not** include the initial fill of the terminal.

4. **GRADE OF PRODUCT:** Turbine Fuel Aviation Grade JP8.

5. **RECEIVING CAPABILITY:** Via a *Contractor-furnished* connection to the common carrier pipeline system (Plantation Pipeline and/or Colonial Pipeline System) at flow rates compatible with the pipeline system on a 24-hour per day, 7-day per week basis. **The Contractor's pipeline connection to the Common Carrier Pipeline System shall include a Contractor furnished temperature compensating pipeline meter assembly that is capable of measuring the quantity of product received. The purpose of the pipeline meter is to validate the quantity of product received. A dedicated system pipeline is desired, but not required. *The Contractor shall in cooperation with the Government establish a pricing formula whereby the Contractor shall reimburse the Government, for any loss of product, based on the metered quantity received minus the quantity delivered into the Government leased tanks (i.e., if 10,000 barrels are received from the common carrier pipeline system, 10,000 barrels must be delivered into the Government leased tanks). The reconciliation shall be accomplished monthly.***

NOTE: Clause I1.01-4 provides the following Definitions:

Para. (c) The term **Isolated system and Segregated system** means a system that has a positive separation from other systems in a tank farm through means of blind flanges, locked double and bleed type valves, etc.

Para. (d) **Dedicated system** means a self contained, single product system with no pipeline that handles more than one product exclusively.

Para. (e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

6. **SHIPPING CAPABILITY:** Via Government-furnished transport trucks on an eight hour per day (5:00 am - 1:00 pm), five day per week basis.

7. CLAUSE B34.01, ANCILLARY FACILITIES:

a. **STORAGE TANKS AND FACILITIES:** All tanks and facilities must meet the minimum requirements of the current API standards, the NFPA codes, and all laws, regulations, etc., applicable to tanks and facilities of the type to be provided. Cone roof tanks with interior floating pans are preferred, however, floating roof tanks will be acceptable. Floating roof tanks will be equipped with roof drains, which prevent water from coming into contact with the fuel. The tanks and facilities will consist of one dedicated system capable of receiving, storing and shipping one-grade of Government-owned fuel. An isolated system in place of the preferred dedicated system is acceptable provided the requirements of Clause L116.01(d) are met.

b. **TRANSPORT TRUCK FACILITIES:** The Contractor's facilities must have transport truck loading capabilities and be equipped with a Scully system (or compatible). The Contractor's transport truck loading facilities must be capable of spotting and loading, a minimum, of four 8,500 gallon transport trucks per hour. The truck loading facilities shall be the type capable of providing transport truck loading that is in compliance with Federal, State, and local environmental laws and regulations based on the type of product being loaded. The transport truck loading facilities shall be equipped with a **temperature compensating meter** capable of accurately measuring the volume of product being loaded. The facility must also be capable of unloading transport trucks being returned after loading due to leaks or other problems. **The loading of Government-furnished tank trucks shall not be in competition with the Contractor's other terminal operations.**

c. **ADDITIVE INJECTION SYSTEMS**: An injection system (pump, blending tank, and ancillary connection facilities) for the injection of fuel additives (i.e., Fuel System Icing Inhibitor (FSII), Conductivity additive (SDA) into the product as follows (See Clauses F45.01, F45.03):

1. Injection of ASA for product received into the facility.
2. Injection of FSII during tank truck loading and shipping.
3. Injection of additives during tank-to-tank transfers.

d. **FILTRATION CAPABILITY**: The Contractor-furnished filtration system shall meet the requirements of API Bulletin 1581, Group II, Class B **to allow for filtration during receipt of product, truck loading and shipping operations, and tank-to-tank transfers**. The cost of replacement filter elements, and disposal of the used filter elements will be reimbursed by the Government upon presentation of supporting documentation and an invoice certified by the QSR. No fee or administrative charge will be added to the replacement filter element cost or the used filter element disposal costs.

e. **ADP EQUIPMENT**: The Contractor shall input inventory data of Government-owned product directly into the Defense Asynchronous Dial-up System (DADS)/Fuels Automated System (FAS) utilizing the Government provided DADS/FAS package. The Contractor shall provide the following **minimum** ADP equipment to be used for reporting inventory data utilizing the DADS/FAS package:

733Hz Processor
One 10 GB2 GB Hard Drive (minimum) and one 3 ½ inch floppy disk drive
Windows 2,000 Operating System
Modem 56 K
V710 Monitor
Mouse

Modem, 33.6 KB

CD-ROM Drive (eight speed or higher)
Printer/Printer paper/Printer Cartridges

The Contractor shall input inventory data of Government-owned product directly into the Government's Fuel automated System (FAS) utilizing the Government-furnished computer software. DESC will install the necessary software and provide training to a minimum of two Contractor personnel. Reference Clause I119.04 for additional information regarding the Government's inventory data requirement.

f. **DADS/FAS DATA ENTRY TELEPHONE SUPPORT**: The Contractor shall provide a dedicated commercial telephone line to be used for data entry into DADS/FAS. The installation charge and the monthly telephone bill will be reimbursed by the Government upon presentation of supporting documentation and an invoice certified by the QSR. No fee or administrative charge will be allowed to be added to the telephone bill.

g. **BEST COMMERCIAL PRACTICES**: In the absence of any contract provision or reference to a method, specification, or other instruction, the Contractor shall perform all services hereunder in accordance with the best commercial practices

LINE ITEM 1001 (MUCC): The prices for the services and facilities to be provided during the performance of the five year period (1 OCT 2003 through 30 SEP 2008) includes the following:

<u>TANK NUMBER</u>	<u>TANK TYPE/PRODUCT</u>	<u>SHELL CAPACITY</u>	<u>FILL CAPACITY</u>	<u>USE CHARGE PER</u>
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	<u>TANK PER MONTH</u>
				<u>(PRORATED FOR PART</u>
				<u>MONTHS)(INCLUDES</u>
				<u>INITIAL FILL & FINAL</u>
				<u>SHIPMENT</u>

LINE ITEM 2001 (MUCC)(1st Option to Renew): The prices for the services and facilities to be provided during the performance of the second five-year period (1 OCT 2008 through 30 SEP 2013) includes the following:

TANK NUMBER	TANK TYPE/PRODUCT	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	TANK PER MONTH
				(PRORATED FOR PART
				MONTHS)(INCLUDES
				INITIAL FILL & FINAL
				<u>SHIPMENT</u>

LINE ITEM 3001 (MUCC)(2nd Option to Renew): The prices for the services and facilities to be provided during the performance of the third five-year period (1 OCT 2013 through 30 SEP 2018) includes the following:

TANK NUMBER	TANK TYPE/PRODUCT	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	TANK PER MONTH
				(PRORATED FOR PART
				MONTHS)(INCLUDES
				INITIAL FILL & FINAL
				<u>SHIPMENT</u>

LINE ITEM 4001 (MUCC)(3rd Option to Renew): The prices for the services and facilities to be provided during the performance of the fourth and final five-year period (1 OCT 2018 through 30 SEP 2023) includes the following:

TANK NUMBER	TANK TYPE/PRODUCT	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	TANK PER MONTH
				(PRORATED FOR PART
				MONTHS)(INCLUDES
				INITIAL FILL & FINAL
				<u>SHIPMENT</u>

SUBLINE ITEM 1001AA

For the first 600,000 barrels (or one times the storage capacity offered) of product received after initial fill, per year or prorated for part thereof for any part year that the use of the storage is limited to a period of less than one year
NO ADDITIONAL CHARGE (Included in Tankage charge)

SUBLINE ITEM 1001AB

For the first 600,000 barrels (or one times the storage capacity offered) of product loaded and shipped from storage prior to final shipment, per year or prorated for part thereof for any part year that the use of the storage is limited to a period of less than one yearNO ADDITIONAL CHARGE (Included in Tankage charge)

SUBLINE ITEM 1001AC: (INCLUDE ANY OTHER CHARGES THAT WOULD APPLY THAT ARE NOT INCLUDED UNDER LINE ITEM 1001 OR IN THE SUBLINE ITEMS BELOW):

SUBLINE ITEM 1002 (EXTP)

Excess throughput: In excess of 600,000 barrels of throughput per year or prorated part thereof for any part year that the use of storage is limited to a period of less than one (1) year, the Contractor will be reimbursed \$ _____ (multi-year) per barrel. Throughput is clearly defined in Clause B34.01 under Estimated Throughput.

SUBLINE ITEM 1003 (IFSI)

Injection Fuel System Icing Inhibitor (FSII): The government will normally purchase and provide FSII. In those cases where the Contractor is required to purchase the additive, the Government will reimburse the contractor for direct out-of-pocket costs incurred in acquiring such additive (See Clause F45.03). The Contractor will be reimbursed \$ _____ (multi-year) per barrel for injecting FSII additive.

SUBLINE ITEM 1004 (IACA)

Injection of Anti-Corrosion Additive: The Contractor will be reimbursed \$ _____ (multi-year) per barrel for injecting Anti-Corrosion additive.

SUBLINE ITEM 1005 (OVRT)

Services other than normal working hours shall be ordered for this subline item in accordance with Clause I16.01 and Clause G148.05. The overtime rates listed below shall apply, unless altered by union agreement or Government regulations. The Contracting Officer shall be notified by the Contractor of any change to these rates, which will be supported, with copies of the appropriate union agreement or formal Government notice.

EMPLOYEE CLASSIFICATION

OVERTIME RATE

Show Computation for the overtime rate of each Classification as follows:

Category

Base Rate times 1.5
Plus Payroll Taxes & Insurance (specify rate)
Subtotal
Plus Profit (specify rate)
Total Overtime Rate

SUBLINE ITEM 1006 (COMM)

- a. FAS Telephone Line: The Contractor will be reimbursed for direct out-of-pocket costs only for FAS Telephone Line. Invoices for reimbursement shall be certified by the QSR and include supporting documentation. No fee or administrative charge shall be added.
- b. Telephone for the QSR: The Contractor will be reimbursed for direct out-of-pocket costs for the QSR telephone expenses. Invoices for reimbursement shall be submitted to the QSR for certification and include supporting documentation.

SUBLINE ITEM 1007 (FILT)

Filters: The government shall reimburse the Contractor for the cost of replacement and disposal of used filters. The contractor shall be responsible for furnishing and providing at the contractor's expense all maintenance requirements of the filtration system. Contractor will submit an invoice to the COR for certification, for replacement and disposal costs only. No fee or administration charge shall be added.

SECTION C – DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C19.01 SECURITY AND FIRE PROTECTION (DESC AUG 1988)

- (a) The entire facility shall be enclosed by a fence suitable to deter unauthorized access. The fence shall be fitted with gates that may be padlocked when not in use.
- (b) A method of visitor and entrance control will be in effect. A visitor register shall be maintained.
- (c) An internal, self-powered communication system linking all critical points of the facility, capable of serving both as an alarm system and for conduct of terminal operation, will be in use.
- (d) A water supply and fire fighting equipment conforming to National Fire Protection Association and American Petroleum Institute standards will be maintained. At locations outside the United States, other standards may be used with prior approval of the Contracting Officer.
- (e) In the event of an emergency at a CONUS COCO terminal, the Contractor shall seek the assistance of the following as appropriate: local ambulance service; local fire department; local, county, and State police; regional office of the Federal Bureau of Investigation; Secret Service; U.S. Marshall's Service; and the Federal Emergency Management Agency.
(DESC 52.211-9FL1)

C19.04 REMOVAL OF WATER BOTTOMS (DESC FEB 1998)

Storage tanks for DESC use shall be equipped with positive water sumps for removal of all water bottoms. All storage tanks shall be drained of water a minimum of once each week and whenever storage tank gauging indicates water is present. (Weekly water drainage is necessary because the datum plate may not necessarily be the low point in the storage tank. Water could possibly accumulate below the datum plate and not show up in the gauging process.) Additionally, all storage tanks shall be drained of water prior to any transfer of fuel and after a minimum of 4 hours or maximum of 24 hours settling time following each product receipt. Storage tanks equipped with floating roofs shall be gauged for water after each rain and drained if water is found present. Product and water levels shall be gauged before and after the draining of water. Water gauges of each storage tank shall be taken and recorded each time it is gauged for product. (Each storage tank shall be equipped with a fuel/water separation system for collection of all product or water dispensed from its bottom water drain(s). This system shall have the capability to return separated product back into the same storage tank.)

(DESC 52.211-9FM1)

C19.07 SAMPLING AND TESTING OF PETROLEUM PRODUCTS (STORAGE) (DESC OCT 2001)

(a) **SAMPLING.** The samples identified in the solicitation attachment entitled MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING are a required part of the services to be provided. The Contractor must provide these samples using qualified personnel, facilities, and equipment on-site and shall include all associated costs in the monthly service charge. These on-site resources may be provided by Contractor personnel or by a commercial source acting on behalf of the Contractor. The Quality Representative will not be responsible for taking any samples for the Contractor. All samples must be taken in accordance with ASTM D 4057, Standard Practice for Manual Sampling of Petroleum and Petroleum Products (API Manual of Petroleum Measurement Standards (MPMS), Chapter 8.1).

(b) **TESTING.** The tests identified in the solicitation attachment entitled MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING are a required part of the services to be provided. Those tests identified in the attachment which are part of a higher order analysis (defined as follows: Composite Samples, Storage Tanks After Receipt, Interface Mixture, Dormant Stocks, and Individual Tests, including particulate contamination) shall be provided by the Contractor using one of the following options (the Contractor shall check the appropriate box below):

☐ The Contractor will perform the tests using its own qualified personnel, facilities, and equipment. (All costs for this service are to be included in the monthly service charge.)

☐ The Contractor will not perform the tests using its own personnel, but will provide on a seven days per week, 24 hours per day basis, its own facilities and equipment for testing of product by Government personnel. (All costs for this service are to be included in the monthly service charge.)

☐ The Contractor will not provide its own personnel, facilities, or equipment. Instead, the Contractor will, within 24 hours after sampling, transport any sample(s) to a commercial laboratory approved by the Government and arrange for that commercial laboratory to perform all the required tests. The Government, at its option, may direct that samples be tested at a Government laboratory under contract to the Government. In this case, transport of such samples is still the responsibility of the Contractor. (The Government will reimburse the Contractor for the actual costs of the tests performed by their commercial laboratory. All other associated costs must be included in the monthly service charge.)

All other tests found in the above referenced attachment, which are not part of a higher order analysis, shall be provided in accordance with the CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) clause.

(c) All facilities and equipment to be provided, whether that of a Contractor or a commercial laboratory, must conform to the standards for such facilities and equipment established by the Occupational Safety and Health Act and the National Fire Protection Association or local regulations, whichever is more stringent.

(DESC 52.211-9FL5)

SECTION E – INSPECTION AND ACCEPTANCE

E1.01 CONTRACTOR RESPONSIBILITY FOR GOVERNMENT INSPECTION OF SERVICES (DESC AUG 1981)

If any inspection or test is made by the Government on the premises of the Contractor or subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties.

(DESC 52.246-9FE5)

E1.11 QUALITY CONTROL PLAN (DESC MAR 2000)

(a) Upon award, the Contractor shall prepare, in triplicate and in English, a Quality Control Plan (QCP). Prior to the first receipt of Government-owned product into the facility, two copies of the QCP shall be forwarded to the Contracting Officer and one copy to the assigned Quality Assurance Representative for approval.

(b) The QCP shall include the following quality control procedures employed by the Contractor.

- (1) Receiving (both product and additives);
- (2) Blending;
- (3) Sampling;
- (4) Testing;
- (5) Storage and handling;
- (6) Loading and shipping;
- (7) Calibration program for testing and measuring equipment in accordance with ISO 10012-1, "Quality Assurance Requirements for Measuring Equipment, Part 1." Equivalent local regulation, as appropriate, may be used as well. Whichever program used must include a section addressing meter proving (used to determine quantity) and must comply with the American Petroleum Institute Manual of Petroleum Measurement Standards, Chapters 4, 5, and 6, or equivalent foreign standard. For any item that requires

calibration but is not covered by ASTM, API, or IP publications, the applicable manufacturer's recommended calibration method(s) outlined in the applicable industry publication shall be used if acceptable to the Government;

- (8) Quantity measurement;
- (9) Records and reports; and

(10) Corrective action procedures (to include, but not be limited to, procedures for notification of Quality Representative, actions to be taken on discovery of off-spec product during receipts/shipments, upgrading procedures for Contractor-caused contamination, leaks, etc.). The QCP shall also include an organizational chart of key personnel and their responsibilities and a schematic diagram of the facility with key inspection/activity points marked for each product handled.

(c) The QCP shall require that each Contractor employee be familiar with its content and shall state that it must be reviewed semiannually and revised as needed. Revision should occur when any change is made to the inspection system, when any corrective action needs to be incorporated due to quality problems, and as otherwise necessary. The Contractor shall sign and date each revision of the QCP.

(DESC 52.246-9F32)

E5.03 INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996)

(a) **DEFINITION. Services**, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

(FAR 52.246-4)

E18 INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS (DESC NOV 1999)

(a) The Contractor shall maintain and make available upon request the following historical data relative to each storage tank provided:

- (1) Date and type of construction;
- (2) Name of installing contractor;
- (3) Product service (past and present) and dates;
- (4) Date of last cleaning/physical entry inspection and contractor's name;
- (5) Structural condition based on cycle inspection at the time of cleaning or repair;
- (6) Record of tank repairs;
- (7) Tank dimensions and capacity;
- (8) Inspection and tank cleaning frequency;
- (9) Tank coating history;
- (10) Tank strapping charts;
- (11) As built drawings (if available); and
- (12) Records of product tests and trends.

(b) At the Contractor's expense, the Contractor shall empty, inspect, and clean each bulk petroleum storage tank and dispose of all tank bottom waste for each tank furnished under this contract at the following intervals:

- (1) **AVIATION FUEL STORAGE TANKS.**

- (i) Every 4 years for uncoated storage tanks without an inlet-filter separator;
 - (ii) Every 6 years for either a coated tank without an inlet filter separator, or for an uncoated tank with an inlet-filter separator; and
 - (iii) Every 8 years for coated tanks with an inlet-filter separator.
 - (iv) For storage tanks with direct receipt of fuel from barge or tanker, the frequency for physical entry inspection and cleaning will be 3, 5, and 8 years for (i), (ii), and (iii) above, respectively.
 - (v) Tanks will be emptied, cleaned, and inspected more frequently than the periods stated in (i) through (iv) above when sample analysis indicates a build up of sediment in the tanks.
- (2) **GROUND AND MARINE FUEL STORAGE TANKS.** Tanks will be emptied, cleaned, and inspected when sample analysis indicates a build up of sediment in the storage tanks.
- (c) The time for cleaning will be measured from the date of the last cleaning regardless of whether the tank was under contract with DESC at the time of the last cleaning.
- (d) MIL-STD-457B, dated March 20, 1989, is hereby incorporated by reference. Samples will be taken and tested at Government expense. If tank cleaning is required earlier than the criteria listed in (b)(1) above and the Government is shown to be at fault, then the Government will be responsible for cleaning, sampling, and testing costs. In all other cases, tanks requiring cleaning will be removed from revenue and cleaned at the Contractor's expense.

(DESC 52.246-9FF1)

**E22.03 LIST OF INSPECTION OFFICES FOR PETROLEUM STORAGE AND LABORATORY SERVICES
CONTRACTS (DESC MAY 2002)**

This list of inspectors shall be used to identify, by location, the Government inspector (Quality Surveillance Representative) assigned inspection responsibilities under DESC storage and laboratory services contracts. The area of inspection responsibility and identifying office are assigned below. Inspection offices are indicated in numbered footnotes at the end of each paragraph.

(a) AREAS OF RESPONSIBILITY WITHIN CONUS, CENTRAL AMERICA AND SOUTH AMERICA:

<u>AREA</u>	<u>FOOTNOTE</u>	<u>AREA</u>	<u>FOOTNOTE</u>
Alabama	1	Nebraska	1
Arizona	2	Nevada	2
Arkansas	1	New Hampshire	1
California	2	New Jersey	1
Caribbean Islands	1	New Mexico	2
Central America	1	New York	1
Colorado	2	North Carolina	1
Connecticut	1	North Dakota	1
Delaware	1	Ohio	1
District of Columbia	1	Oklahoma	1
Florida	1	Oregon	2
Georgia	1	Pennsylvania	1
Idaho	2	Puerto Rico	1
Illinois	1	Rhode Island	1
Indiana	1	South America	1
Iowa	1	South Carolina	1
Kansas	1	South Dakota	1
Kentucky	1	Tennessee	1
Louisiana	1	Texas	1
Maine	1	Utah	2
Maryland	1	Vermont	1
Massachusetts	1	Virginia	1
Mexico	1	Washington	2

Michigan 1

West Virginia 1

Minnesota 1
Mississippi 1
Missouri 1
Montana 2

Wisconsin 1
Wyoming 2

FOOTNOTES:

1. DESC Americas - East
Federal Building, Room 1005
2320 LaBranch Street
Houston, TX 77004-1091

Phone: DSN 940-1152, ext. 401
COM (713) 718-3883, ext. 401
FAX (713) 718-3891

2. DESC Americas - West
3171 N. Gaffey Street
San Pedro, CA 90731-1099

Phone: DSN 929-6960
COM (310) 900-6960
FAX (310) 900-6973

(b) OVERSEAS AREAS OF RESPONSIBILITY (INCLUDING ALASKA AND HAWAII):

<u>AREA</u>	<u>FOOTNOTE</u>	<u>AREA</u>	<u>FOOTNOTE</u>
Antarctica	3	Maldives	3
Afghanistan	2	Malta	1
Africa (except countries assigned to DESC Middle East)	1	Mauritius	3
		Midway Island	3
Alaska	3	New Zealand	3
Armenia	1	Oman	2
Asia (Continental)	3	Pakistan	2
Australia	3	Papua New Guinea	3
Azerbaijan	1	Philippines	3
Azores	1	Qatar	2
Bahrain	2	Russia	1
Brunei	3	Saudi Arabia	2
Comoros	3	Seychelles	2
Cyprus	1	Somalia	2
Djibouti	2	South Pacific Islands	3
Egypt	2	Sri Lanka	3
Eritrea	2	Sudan	2
Ethiopia	2	Syria	1
Europe (Continental)	1	Taiwan	3
Georgia	1	Tajikistan	2
Greenland	1	Turkey	1
Hawaii	3	Turkmenistan	2
Iceland	1	United Arab Emirates	2
Indonesia	3	United Kingdom	1
Ireland	1	Uzbekistan	2
Israel	1	Wake Island	3
Japan	3	Yemen	2
Johnston Atoll	3		
Jordan	2		

Kazakhstan	2
Kenya	2
Kuwait	2
Kyrgyzstan	2
Lebanon	1
Madagascar	3
Malaysia	3

FOOTNOTES:

- | | |
|---|--|
| <p>1. DESC Europe (DESC-EU)
CMR 443, Box 5000
APO AE 09096-5000
Location: Weisbaden, Germany
DSN (314) 338-7710
COM 49-611-380-7710
FAX 49-611-380-7406</p> | <p>2. DESC Middle East (DESC-ME)
PSC 451, Box DESC-ME
FPO AE 09834-2800
Location: Juffair, NSA, Bahrain
DSN (318) 439-4650
COM 973-724-650
FAX 973-724-670</p> |
| <p>3. DESC Pacific (DESC-PAC))
Box 64110
Camp H M Smith, HI 96861-4110
Phone: DSN (315) 477-1173
COM (808) 477-1173
FAX (808) 477-5710</p> | |
- (DESC 52.246-9F45)

E28 CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) (DESC OCT 2001)

(a) Inspection and tests by the Government of services, facilities, and equipment specified within this contract does not relieve the Contractor from responsibility to meet all requirements of the contract.

(b) The Contractor shall furnish personnel, facilities, and equipment on-site to accomplish the following routine tests and procedures. These on-site resources may be provided by Contractor personnel or by a commercial source action on behalf of the Contractor. The Quality Representative will not be responsible for performing any of these services for the Contractor.

(1) Sampling of storage tanks, shipments and receipts in accordance with ASTM D 4057, Standard Practice for Manual Sampling of Petroleum and Petroleum Products (API Manual of Petroleum Measurement Standards (MPMS), Chapter 8.1);

(2) Retaining of product composite samples from shipments and receipts as follows:

<u>METHOD OF SHIPMENT</u>	<u>MINIMUM QUANTITY</u>	<u>MINIMUM RETENTION PERIOD</u>
Pipeline	20 liters	60 days
Tanker/Barge		
Parcel Composite	20 liters	90 days
Each compartment	0.5 liters	90 days
Navy Fleet Oilers/Vessels	10 liters	60 days
Tank Truck/Car	1 liter	15 days

NOTE: After the minimum retention period, samples shall be tested for Appearance, Color (Visual), API Gravity/Density and Flash Point and, if found to be on-specification, shall be returned to like Government stock on-site. Sample containers may be reused if properly cleaned.

(3) Determining the presence of water in storage tanks, shipments and receipts. Ensure that accurate water cuts are obtained by means of a water indicating paste conforming to MIL-W-83779B. Two suggested sources are Stewart Hall Chemical Testmaster Water Indicating Paste or Sartomer Sar Gel Water Indicating Paste (see Note 2 below);

(4) Determining Density at 15 degrees Celsius or API gravity of products by ASTM D 1298 or ASTM D 4052 (see Note 2 below);

(5) Determining the temperature of products by the API MPMS, Chapter 7 (see Note 2 below);

(6) Determining the Appearance of applicable products using ASTM D 4176, Procedure 1 (see Note 2 below);

(7) Determining the visual color of products.

(8) Determining the Flash Point of applicable products using test methods cited in the appropriate product specification (see Note 2 below);

(9) Conversion of gross to net gallonage (liters);

(10) Determining the percentage (volume) of fuel system icing inhibitor (FSII) by means of a portable refractometer in accordance with ASTM D 5006. One suggested source is H.B. Industries, Inc., Glenview, IL 60025 (B/2 Anti-Icing Additive test kit) (see Note 2 below); and

(11) Determining the range of fuel electrical conductivity using ASTM D 2624. One suggested source for a conductivity meter is Emcee Electronics, Inc., Sarasota, FL 33581 (Model 1152) (see Note 2 below).

Note 1: All costs for providing the above tests and procedures shall be included in the monthly service charge. The only exception to the Contractor's obligation to provide these services as part of the monthly service charge is when the tests described above are part of the higher order analysis (defined as the following categories: Composite Samples, Storage Tanks After Receipt, Interface Mixtures, Dormant Stocks and Individual Tests (including particulate contamination) found in the attachment to the solicitations entitled MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING. Provisions for providing higher order analyses are covered in the SAMPLING AND TESTING OF PETROLEUM PRODUCTS (STORAGE) clause.

Note 2: Upon request, the Contractor shall permit the Quality Representative unrestricted use of the equipment and ancillary supplies needed to perform this test/procedure on behalf of the Government.

(c) During the contract, the Contractor shall furnish representative samples of the product in each storage tank, shipment or receipt at the request of, and in the manner and to the place designated by, the Quality Representative. Sample size will be 2 gallons for gasoline-type fuels and one gallon or 10 gallons for jet diesel-type fuels. The number of samples to be furnished during any 12-month period shall not exceed eight times the number of tanks specified in the contract. Such samples shall be packed, marked, and shipped by the Contractor, shipping expense prepaid, in containers and shipping boxes furnished by the Contractor. Sample containers shall be epoxy coated on the interior. This requirement is in addition to sampling required above and elsewhere in the contract.

(DESC 52.246-9FE1)

E34 TEST FOR SULFIDES IN WATER (DESC MAY 1987)

(a) **SCOPE.** This method describes a procedure for determining the presence of hydrogen sulfide, which is sometimes formed as a result of bacterial action on the sulfates contained in water bottoms in fuel storage tanks.

(b) **APPARATUS.** 250 ml conical flask.

(c) **MATERIALS.**

(1) Dilute (10%) chemically pure sulfuric or hydrochloric acid.

(2) Lead acetate paper.

(d) **SAMPLES.** Representative water samples from storage tank bottoms must be taken in a glass bottle. In some cases it will be necessary to take the water sample in a Bacon bomb sampler. Samples so taken will always be transferred to a glass bottle. To preclude oxidation by air, the filled bottle must be capped immediately. The sample should be tested as soon as possible after sampling to minimize possible changes in the composition of materials in the water.

(e) **PROCEDURE.**

(1) The sample must be shaken thoroughly just prior to performing the test to make certain that any sediment present is included in the portion of the sample to be tested.

(2) Transfer 100 ml of the shaken sample into a conical flask. Add 20 ml of dilute (10%) chemically pure sulfuric or hydrochloric acid to the flask. Immediately place a piece of lead acetate paper folded in a "V" shape in the neck of the flask. Bring the water to a boil and continue to gently boil for three or four minutes.

(f) **REPORT.** The presence of sulfides in the sample will be reported if the lead acetate paper shows a black or brown discoloration.

(DESC 52.246-9FN5)

E36 INSPECTION (STORAGE) (DESC FEB 1970)

The facilities to be provided hereunder shall be ready for inspection and acceptance by 1 October 2003. The Contractor shall notify the Contracting Officer of the date such tanks and facilities are available for inspection and acceptance, and the Contracting Officer, or his designated representative, shall promptly thereafter inspect such tanks and facilities. No payment will be made for services performed or facilities provided prior to 1 October 2003.

(DESC 52.246-9FD5)

E50 RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(FAR 52.246-16)

SECTION F – DELIVERIES OR PERFORMANCE

F1.04 GENERAL RECEIVING AND STORING CONDITIONS (DESC OCT 1997)

(a) Notice will be furnished to the Contractor of upcoming product receipts. The notice will include the method of receipt, the source, grade, or type of product, and any special instructions.

(b) The Contractor shall transfer and store each grade of product in a manner that preserves the quality of the product and will prevent contamination. The responsibility for preventing contamination rests with the Contractor.

(c) When requested, the Contractor will transfer product between tanks to consolidate like types or grades.

(d) Whenever a product is to be removed from a tank to accomplish cleaning or repair of the tank, or to change product, or to effect the release of the tank to the Contractor, the Contractor shall strip such tank to preclude loss of recoverable fuel. The Contractor shall provide the Quality Assurance Representative (QAR) with information pertaining to the amount of fuel deemed unrecoverable, the reason why the fuel cannot be recovered, and an analysis of the unrecovered fuel quality. All unrecoverable tank bottoms/line fill quantities will be reported to the Property Administrator for disposition instructions. Contaminated/off-specification product will be reported to the QAR in order to obtain disposition instructions. Tanks out of service for repair shall be removed from revenue until such time as they are returned to Government Service. Tanks out of service for cleaning shall be governed by the INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS clause.

(e) Custody of product received by pipeline, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the flange connecting the carrier's pipeline and the Contractor's pipeline.

(f) Custody of product received by transport truck, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes from the transport truck discharge hoses into the Contractor's receiving facilities.

(g) Custody of product received by tank car, and risk of loss thereof, shall pass from the carrier to the Contractor when the tank car comes to rest on the Contractor's siding.

(h) Custody of product received from tanker or barge, and risk of loss thereof, shall pass from the carrier to the Contractor when the fuel passes the vessel's permanent hose connection.

(i) The Contractor shall be held accountable for demurrage charges arising from delay(s) in receipt by tank cars or transport trucks, except when the delay(s) are caused by reason beyond the control and without the fault or negligence of the Contractor and its subcontractors.

(j) The Contractor will prepare and process the following certificate on bond paper when it is necessary to upgrade or downgrade a product:

I certify that _____ gallons of _____ have been upgraded/downgraded
(quantity) (product)

from _____ to _____. This action

(product)

(product)

(enter reason for the action)

Signature of Contractor Representative

☐ I concur with the Contractor's certification.

☐ I do not concur with the Contractor's certification for the following reasons:

Signature of Quality Representative

(A receipt transaction will be reflected on the monthly stock report for the gain in product, with a shipment being reflected for the losing product.)

(k) The following subparagraphs apply only to barges and tankers.

(1) SCHEDULED ARRIVAL DATE AND BASIC ALLOWED LAYTIME.

(i) The Contractor shall be notified in advance of the scheduled arrival date. Each notice will specify the quantity to be delivered, the cargo number, the name of the vessel, and the scheduled arrival date. For tankers, the notice will also include the size of the vessel and the expected time of arrival. For tankers, the notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date; for barges, at least 48 hours in advance of the scheduled arrival date. The Government will provide the maximum notice practicable when the anticipated vessel transit time from the loading point is less than the 72/48 hours. Changes in the scheduled arrival date that will provide less than the 48 hours notice for barges and the 72 hours notice for tankers will require the verbal approval of the Contractor. This verbal approval is to be confirmed in writing as soon as practicable.

(ii) The Contractor shall provide a reachable berth, free of charge, where the vessel can be safely moored and afloat with necessary access thereto as soon as possible, but no later than, for barges, within 3 hours after issue of notice of readiness to unload, and, for tankers, within 6 hours after issue of notice of readiness, PROVIDED --

(A) If the vessel is tendered for unloading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be unloaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

(B) If the vessel is tendered for unloading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be unloaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available.

(iii) Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

(iv) Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until unloading of the barge or tanker is completed and hoses have been disconnected.

(v) Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

(A) **FOR BARGES:** One hour for each 2,000 barrels of product to be unloaded.

(B) **FOR TANKERS:** Thirty-six hours of discharge of a full vessel cargo. When partial vessel cargoes are to be unloaded, the 36 hours will be prorated based on quantities discharged in each port.

(vi) Hoses and loading arms for unloading a barge or tanker will be furnished, connected, and disconnected by the Contractor.

(2) INCREASES TO BASIC ALLOWED LAYTIME.

(i) If, after laytime commences, the conditions or facilities of the barge or tanker to be unloaded do not permit unloading, basic allowed laytime shall be increased by the duration of the delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

(iii) If the vessel owner's or operator's regulations prohibit unloading at any time after laytime has commenced, the lost time shall be added to the basic allowed laytime.

(iv) If, for any reason, the Contractor is delayed in unloading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

(v) There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

(vi) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

(3) **PAYMENT OF DEMURRAGE.** For all hours of laytime which elapse in excess of the basic allowed laytime for unloading provided for by subparagraph (k)(1)(v), or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

(i) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

(ii) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

(DESC 52.211-9FJ5)

F1.05 GENERAL SHIPPING CONDITIONS (DESC OCT 1997)

(a) The Contractor will prepare the inspection and shipment documents covering deliveries made from the terminal in accordance with instructions contained in the Documentation and Product Property Control Plan. Normally, the document will consist of DD Form 250 for tank car, tank truck, pipeline, and packaged shipments, and DD Form 250-1 and ullage/innage reports in the case of barge and tanker shipments. The Contractor will distribute the DD Forms 250 and the Quality Representative (QR) will distribute the DD Forms 250-1. When the QR is not present for release or shipment of product inspected at these facilities, and the Contractor's quality control program has been approved by the responsible Government Quality Office in accordance with paragraph 246.471 of the DOD FAR Supplement, the Contractor will insert the following certification on the inspector's copy of the shipping documents:

"I certify that the above supplies were (a) in the quantity indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 246.471-2 of the DoD FAR Supplement under authorization of (NAME and TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE CONTRACT ADMINISTRATION OFFICE) in a letter dated (DATE OF AUTHORIZING LETTER). (SIGNATURE AND TITLE OF CONTRACTOR'S DESIGNATED REPRESENTATIVE)."

(b) Shipment of products hereunder will be made only pursuant to a "release" furnished by the Product Property Administrator or his designated representative. The "release" will indicate the consignees who are authorized to issue "calls" or "orders" for shipment of product. Such "release" will be periodically furnished to the Contractor by the cognizant Product Property Administrator.

(c) Conveyances required for shipments shall be furnished or designated by the Government. The Contractor shall inspect all shipping conveyances prior to loading to insure that product loaded will not be lost or contaminated by the condition of the equipment. Tank truck inspection must be performed by qualified Contractor personnel. Delegation of this responsibility shall not be passed to the tank truck operator/driver. The tank truck operator/driver may be permitted to physically load the tank truck; however, the loading operation must be under the surveillance and direction of Contractor personnel. Equipment found to be unsatisfactory shall be reported as follows: (1) TANKERS AND BARGES. Report immediately by telephone to the QR; if not present, the master of the tanker or barge or to the carrier's agent or general office; (2) TANK CARS. Report to the QR and by wire (Government Rate, Collect) to Commander, Eastern Area, Military Traffic Management Command, ATTN: MTE-INR-O, Brooklyn, NY 11250. Any shortage or overage of tank cars shall be similarly reported; (3) TRANSPORT TRUCKS. Contractor shall expeditiously report to the Traffic Manager of the appropriate Defense Fuel Region, Government QR, and to the carrier's terminal where equipment is domiciled.

(d) Except when loading barges or tankers, or making pipeline deliveries, strainers of 100 mesh or finer shall be utilized in loading aviation fuels and jet lubricating oil and 60 mesh or finer in the case of reciprocating engine oil. Strainers shall be located as

near the loading point as practicable. Contractor shall furnish and periodically inspect and repair same, if necessary, keeping a written record thereof. clean such strainers and

(e) Contractor shall affix serially numbered seals to the dome covers of tank cars and all openings in the case of tank trucks in such a manner that entry could only be gained by breaking a seal. Such seals will be furnished by the Contractor. Seal numbers will be indicated on shipping documents.

(f) Placards, as required by 49 CFR 172.506 and 49 CFR 172.508, shall be furnished and affixed to all tank cars and tank trucks by Contractors unless placards are already affixed.

(g) **FOR TANK CARS ONLY.**

(1) If Government-owned or leased tank cars are furnished, the Contractor will maintain records showing each day a car is received or forwarded by car number and will furnish the information to the Defense Fuel Regional Office upon request.

(2) Bottom outlet gaskets and manway cover gaskets, when required due to deterioration or loss, shall be furnished and applied to tank cars by the Contractor.

(3) The Contractor shall (i) inspect empty Government-owned tank cars located on the Contractor's premises and (ii) ship tank cars located on the Contractor's premises to repair facilities as directed by the Government.

(h) Unless otherwise directed, the Contractor shall prepare and distribute Government bills of lading utilized in shipments. Such bills of lading, routing instructions, and transportation assistance will be furnished by the Defense Fuel Region placing orders.

(i) The Contractor shall comply with routing instructions furnished by the Government. Such instruction will include names, routes, route order numbers, and other pertinent information. The Contractor shall be responsible for scheduling of commercial transport trucks, trucks and trailer, and tank wagons to its plant in accordance with such routing instructions and consonant with the applicable order. The Contractor shall provide sufficient advance notice to carriers and schedule the carrier's equipment for loading. The Contractor shall reimburse the Government for any demurrage incurred as a result of improper scheduling.

(j) Custody of product shipped by pipeline, and risk of loss thereof, shall pass from the Contractor to the carrier when the product passes the flange connecting the Contractor's pipeline and the carrier's pipeline.

(k) Custody of product shipped by transport truck, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded transport truck is released for shipment by the Contractor.

(l) Custody of product shipped by tank car, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded tank car is picked up by the carrier.

(m) Custody of product delivered to tanker or barge, and risk of loss thereof, shall pass from the Contractor to the carrier when the fuel passes the vessel's permanent hose connection.

(n) The Contractor shall be held accountable for demurrage charges arising from delay(s) in shipment by tank cars and transport trucks except when those delays are caused by reasons beyond the control and without the fault or negligence of the Contractor and its subcontractors.

(o) The following subparagraphs only apply to barges and tankers.

(1) **SCHEDULED ARRIVAL DATE AND BASIC ALLOWED LAYTIME.**

(i) Notice shall be furnished to the Contractor in advance of the date on which loading is to be made, which date is hereinafter referred to as the "Scheduled Arrival Date." Each notice will specify the quantity to be loaded, the cargo number, and name of the vessel and the scheduled loading date. For tankers, notice will also include the size of the vessel and the expected time of arrival. Notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date for tankers, and at least 48 hours in advance of the scheduled arrival date for barges. When anticipated vessel transit time to the loading point is less than 72/48 hours, the Government will provide the maximum notice practicable. Any change in the scheduled arrival date of less than 48 hours notice for barges and 72 hours notice for tankers will require verbal approval of the Contractor, confirmed in writing..

(ii) The Contractor shall provide as soon as possible, but within 3 hours after issue of notice of readiness to load from a barge and within 6 hours after the Contractor receives notice of readiness to load from a tanker, a reachable berth, free of cost to the Government, where the vessel can be safely moored and afloat with necessary access thereto PROVIDED, however --

(A) If the vessel is tendered for loading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be loaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

(B) If the vessel is tendered for loading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be loaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become

available. If the vessel is not moored in its proper turn with other vessels, laytime will commence at 6:00 A.M. on the date the Government vessel's turn occurred.

(iii) Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

(iv) Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until loading of the barge or tanker is completed and hoses have been removed.

(v) Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

(A) **FOR BARGES:** One hour for each 2,000 barrels of product to be loaded.

(B) **FOR TANKERS:** Thirty-six hours for load of full vessel cargo. When partial vessel cargoes are to be loaded, the 36 hours will be prorated based on quantities loaded by each supplier. The 36 hours includes allowances for routine events that occur in the loading process, such as cushioning and topping off of vessel tanks.

(vi) Hoses and loading arms for loading shall be furnished, connected, and disconnected by the Contractor.

(2) INCREASES TO BASIC ALLOWED LAYTIME.

(i) If, after laytime commences, the conditions or facilities of the barge or tanker to be loaded do not permit loading, basic allowed laytime shall be increased by the duration of the delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

(iii) After laytime commences, when vessels are required to dock at anchorage due to vessel delays such as vessel inspection and inerting, laytime credit will be allowed for transit time from anchors away at anchorage until first line ashore berthing, not to exceed 2 hours.

(iv) If regulations of the owner or operator of the vessel prohibit loading at any time after laytime has commenced, time so lost shall be added to basic allowed laytime.

(v) If, for any reason, the Contractor is delayed in loading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

(vi) There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

(vii) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

(3) PAYMENT OF DEMURRAGE. For all hours of laytime which elapse in excess of the basic allowed laytime for loading provided for by paragraph (1) above, or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

(i) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

(ii) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

(DESC 52.247-9FP1)

F1.14 DETERMINATION OF QUANTITY (STORAGE) (DESC NOV 1997)

The total gallorage received into or shipped from the Contractor's facilities shall be determined as follows:

(a) **RECEIPTS OR SHIPMENTS OF CRUDE AND FUELS OTHER THAN RESIDUAL FUELS** (by transport truck of 3500 gallons or less) (truck and trailer combination when delivering same product will be considered as one container or conveyance). On an actual gallorage basis, without temperature correction.

(b) **RECEIPTS OR SHIPMENTS OF RESIDUAL FUELS** (in excess of 3500 gallons of crude or other fuels by tank car or transport truck). On a gallorage basis corrected to 60°F.

(c) **RECEIPTS OR SHIPMENTS BY TANKER OR BARGE OR PIPELINE.** On a gallorage basis corrected to 60°F. Quantities shipped or received will be determined on the basis of shore tanks or tender gauges taken by the Contractor and authenticated by the Quality Representative (QR). The ship or carrier's representative may participate in these determinations. During the gauging of shore tanks, the tanker, barge, or carrier's representative may participate in the quantity determinations, and, in the case of tanker/barge shipments or receipts, the Contractor may participate in the operations on board the tanker or barge which are required to determine the quantity of product in the tanker or barge cargo tanks.

(d) In the case of receipts, the Contractor shall sign the bill of lading and other related documents for the actual quantity received as determined above. When requested by the QR, the Contractor shall investigate losses or gains in connection with receipts or shipments to determine if the cause is at the Contractor's facility.

(e) MEASUREMENT STANDARDS. All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS). Outside the United States,

other technically equivalent national or international standards may be used. In addition, the following specific standards will be the referee method.

(1) API MPMS Chapter 11.1, Volume Correction Factors (API 2540/ASTM D 1250/IP 200/ISO 91-1). Either the printed version or the computer subroutine version of the standard may be used. In case of disputes, the computer subroutine will be the referee method.

(i) For crude oils, JP4, and Jet B, use Volume I, Tables 5A and 6A (or Volume VII Tables 53A and 54A).

(ii) For lubricating oils, use Volume XIII, Tables 5D and 6D (or Volume XIV, Tables 53D and 54D).

(iii) For all other fuels and fuel oils, use Volume II, Tables 5B and 6B (or Volume VIII, Tables 53B and 54B).

(iv) For chemicals/additives, use Volume III, Table 6C (or Volume IX, Table 54C), or volume correct in accordance with the product specification.

(v) Volume XII, Table 52, shall be used to convert cubic meters at 15°C to barrels at 60°F. Convert liters at 15°C to cubic meters at 15°C by dividing by 1,000. Convert gallons at 60°F to barrels at 60°F by dividing by 42. Should foreign law restrict conversion by this method, the method required by law shall be stated in the offer.

(vi) If the original measurement is by weight and quantity is required in U.S. gallons, then--

(A) Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60°F/ Convert kilograms to metric tons by dividing by 1,000.

(B) Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60°F.

(2) API MPMS Chapter 4, Providing Systems. All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulations (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent.

(3) API MPMS Chapter 12, Calculation of Petroleum Quantities. All calculations of net quantities shall be made in accordance with this chapter.

(f) In addition to gauging of storage tanks to determine quantities issued or received, the Contractor will gauge each active storage tank daily and each inactive storage tank weekly and compute physical inventories for the purpose of detecting loss of products.
(DESC 52.211-9FG1)

F45 OPERATION OF FUEL SYSTEM ICING INHIBITOR ADDITIVE SYSTEM (DESC JUL 1992)

(a) The Contractor shall purchase and store Fuel System Icing Inhibitor (FSII), NSN 6850-00-082-2522 (Bulk) or NSN 6850-00-060-5312 (55 gallon drum), conforming to specification MIL-I-27686E dated 6 March 1970 and Amendment 4 dated 17 January 1984, as required by the Government. The Government shall reimburse the Contractor for direct out-of-pocket costs incurred in acquiring this additive provided the following is satisfied. All invoices shall be--

(1) Supported by adequate evidence to properly reflect Contractor's actual out-of-pocket costs;

(2) Certified by the Quality Representative (QR) with respect to quality and quantity of materials furnished; and

(3) Forwarded to the Administrative Contracting Officer (ACO) for approval.

Title to the FSII purchased by the Contractor for which the Contractor is entitled to be reimbursed shall pass to and rest with the Government upon delivery of product and acceptance by the QR. Acceptance will be based on verification of quantity and full specification test analysis and/or report being provided to the QR for product purchased by the Contractor. After product acceptance, the QR shall notify the ACO of acceptance.

(b) The Government has acquired a nonexclusive and nontransferable license to practice or cause to be practiced, by or for the Government throughout the world, any and all of the inventions disclosed in U.S. Letters Patent Nos. 2,952,121 and 3,032,971. This license extends (1) to any patents that may issue as a result of any division, continuation, or reissue of the U.S. patents identified above, and (2) to present and future, foreign patents and subsequent U.S. patents involving the same disclosure to the extent such present, future, or subsequent patents might be infringed. The Contractor agrees not to voluntarily make any such royalty payment for additives used in performance of this contract and to report promptly to the Contracting Officer in the event the Contractor's additive supplier has or is requiring such royalty payment.

(c) The Contractor shall inject FSII when requested by an authorized Government representative.

(d) The Government may, at its option, purchase and provide FSII.

(DESC 52.211-9F70)

F45.01 OPERATION OF CONDUCTIVITY ADDITIVE SYSTEM (DESC OCT 1998)

(a) The Contractor shall inject, store, and maintain Government-furnished conductivity additive in a sheltered area protected from the climate in accordance with local fire codes. Procedures in the Quality Control Plan (QCP) pertaining to the injection

of conductivity additive will include a method for determining and/or calculating the amount of additive required to ensure delivery of the end product meeting the applicable aviation fuel conductivity specification requirements or as requested by the Government Representative. The Contractor is responsible for monitoring the conductivity injection operation to ensure homogeneity of the end product. The Contractor shall inject conductivity additive when requested by an authorized Government representative.

(b) The Contractor's conductivity additive injection system shall be equipped with the following, as a minimum:

(1) A conductivity additive injection system capable of injecting conductivity additive at the rate of 0 to 114 gallons per hour at a maximum discharge pressure of 100 per square inch. At the Contractor's option, either a proportionating pump or a pipeline injection system may be used.

(2) The conductivity additive injection system shall be equipped with steel or stainless steel blending tank(s) with a capacity of at least 100 gallons. The additive system shall be connected into the terminal jet fuel system.

(c) In the event of unusual circumstances (i.e., Government supply shortage, emergency requirement, etc.), the Contractor may be required to purchase conductivity additive, as required by the Government. The Government shall reimburse the Contractor for direct out-of-pocket costs incurred in acquiring this additive provided the following is satisfied. All invoices shall be--

(1) Supported by adequate evidence to properly reflect Contractor's actual out-of-pocket costs;

(2) Certified by the Quality Representative (QR) with respect to quality and quantity of materials furnished; and

(3) Forwarded to the Administrative Contracting Officer (ACO) for approval.

Title to the conductivity additive purchased by the Contractor for which the Contractor is entitled to be reimbursed shall pass to and rest with the Government upon delivery of product and acceptance by the QR. Acceptance will be based on verification of quantity and full specification test analysis and/or report being provided to the QR for additive purchased by the Contractor. After product acceptance, the QR shall notify the ACO of acceptance. (DESC 52.211-9F60)

F45.03 OPERATION OF FUEL SYSTEM ICING INHIBITOR ADDITIVE SYSTEM (COCO) (DESC AUG 1999)

(a) As required by the Government, the Contractor shall inject, store, and maintain High Flash Fuel System Icing Inhibitor (FSII) conforming to the latest revision of MIL-I-85470. The Government may also require the Contractor to purchase High Flash FSII (in bulk or 55-gallon drums) conforming to the latest revision of MIL-I-85470. In such a case, the Government shall reimburse the Contractor for direct out-of-pocket costs incurred in the acquisition of the additive in accordance with the SUBMISSION OF INVOICES FOR PAYMENT clause.

(b) The Contractor shall maintain and operate an additive line injection system equipped with a flow proportioning pump capable of uniformly injecting FSII into aviation turbine jet fuel at concentration levels ranging from 0.01 to 0.25 volume percent. The injection system shall be capable of automatically adjusting to changes in pipeline flow rates at the point of injection and include a calibrated meter for determining the amount of additive injected. The additive system must be capable of injecting FSII into Government-owned jet fuel(s) during all issues from the terminal and during all tank-to-tank transfers within the terminal.

(c) Bulk FSII storage systems shall be configured to minimize the introduction of moisture. Any proven industry system design utilized to maintain acceptable moisture limits in accordance with the product specification may be offered. Two acceptable designs being utilized are (1) the use of gaseous nitrogen to blanket the product, or (2) a desiccating/drying device installed in the ventilation system of the tank. The use of carbon dioxide (CO₂) as an inerting agent is prohibited. The tanks' storage capacity must be capable of receiving, at a minimum, 5,300-gallon tank truck deliveries. The minimum tank size required is 8,000 gallons. The Government may require the Contractor to use drums or, for overseas use only, intermodal tank containers in lieu of bulk storage tanks. FSII shall be handled and stored in accordance with any applicable environmental and fire regulations. Reference the SERVICES TO BE FURNISHED clause for the description of storage tank requirements.

(d) During receipts/issues from the terminal and transfers within the terminal, the Contractor is responsible for assuring that the FSII concentration for Government-owned jet fuels conforms to the specification. The injection system shall be adjusted to achieve a homogenous concentration level of 0.11 to 0.13 volume percent in Grades JP4 and JP8 and 0.16 to 0.18 volume percent in Grade JP5. Without limiting the Government's right to test its product at any time or any place, the Government specifically reserves the right to test each compartment of the shipping conveyances to ensure that the FSII concentrations conform to the specification. Notwithstanding the Government's right to test, the Contractor shall comply with inspection and testing requirements stated in the contract and is responsible for ensuring that FSII concentrations loaded onto shipping conveyances conform to the specification.

(e) The Government may require the Contractor to fill special orders for jet fuel without FSII or with elevated levels of FSII.

F76 CONTRACT PERIOD/PERFORMANCE REQUIREMENTS (STORAGE) (DESC DEC 1991)

During the contract period, 1 October 2003 through 30 September 2023, the Contractor shall provide petroleum storage facilities and services at the following location:

(Street address)

(City/State/Zip)

(DESC 52.242-9FA1)

F107 STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the DEFAULT, or the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; PROVIDED, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(FAR 52.242-15)

SECTION G – CONTRACT ADMINISTRATION DATA

G2.03 DESIGNATION OF CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (DESC JAN 1986)

For the purpose of this contract, the Contracting Officer's Technical Representative shall be _____

(DESC 52.242-9F50)

G3 INVOICE NUMBERING REQUIREMENTS (DESC AUG 1998)

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected.

(DESC 52.211-9FH5)

G3.01 PAYMENT DUE DATE (DESC OCT 1988)

When payment due date falls on a Saturday or Sunday, or on a United States Official Federal holiday, payment will be due and payable on the following workday. (DESC 52.232-9F45)

G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DESC DEC 1999)

Remittances shall be mailed only at the Government's option or where an exception to payment by Electronic Funds Transfer (EFT) applies. (See the PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION or the PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause.)

Offeror shall indicate below the complete mailing address (including the nine-digit zip code) to which remittances should be mailed if such address is other than that shown in Block 15a (Standard Form (SF) 33) for noncommercial items or Block 17a (SF 1449) for commercial items. In addition, if offeror did not incorporate its nine-digit zip code in the address shown in Block 15a of the SF 33 or in Block 17a of the SF 1449, the offeror shall enter it below:

(a) Payee Name (Contractor): _____

(DO NOT EXCEED 25 CHARACTERS)

(b) Check Remittance Address:

(DO NOT EXCEED 30 CHARACTERS PER LINE)

(c) Narrative Information (special instructions).

(DO NOT EXCEED 153 CHARACTERS)

(DESC 52.232-9F55)

G9.09 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) **METHOD OF PAYMENT.**

(1) All payments by the Government under this contract, shall be made electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until Government can make payment by EFT (but see paragraph (d) of this clause).

(b) **CONTRACTOR'S EFT INFORMATION.** The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) **MECHANISMS FOR EFT PAYMENT.** The Government shall make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) **SUSPENSION OF PAYMENT.** If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) **CONTRACTOR EFT ARRANGEMENTS.** The Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) **LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS.**

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously direct funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) of this clause shall apply.

(g) **EFT AND PROMPT PAYMENT.** A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) **EFT AND ASSIGNMENT OF CLAIMS.** If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require a condition of any such assignment that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect within the meaning of paragraph (d) of this clause.

(i) **LIABILITY FOR CHANGE OF EFT INFORMATION BY FINANCIAL AGENT.** The Government is not liable for errors resulting from changes in EFT information made by the Contractor's financial agent.

(j) **PAYMENT INFORMATION.** The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(FAR 52.232-33)

G9.14 SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information

under paragraphs (b)(1) and (j) of the PAYMENT BY ELECTRONIC FUNDS
TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause.

- (1) The solicitation number (or other procurement identification number).
- (2) The offeror's name and remittance address, as stated in the offer.
- (3) The signature (manual or electric, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.
- (5) The offeror's account number and the type of account (checking, savings, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire Transfer System and, therefore, not the receiver of the wire transfer payment.
(FAR 52.232-38)

G21 DESIGNATION OF PROPERTY ADMINISTRATOR (DESC MAR 1995)

The Property Administrator for product handled under the terms of the contract will be designated by the Commander, Defense Energy Support Center.

(DESC 52.242-9F65)

G22 DESIGNATION OF THE DEFENSE FUEL REGION (DESC JUL 1997)

- (a) The Defense Fuel Region to which reference is made herein is the--

Commander
Defense Energy Region Americas
2330 LaBranch, Room 1213
Houston, TX 77004-1091

COMM: 713-718-3885
FAX: 713-718-3899

- (b) The Defense Fuel Office to which reference is made herein is the—

Same as Above

(c) The Commander of the Defense Fuel Region or his designee, appointed above, is the authorized representative of the Commander, Defense Energy Support Center.
(DESC 52.242-9F55)

G148.05 SUBMISSION OF INVOICES FOR PAYMENT (SERVICES) (DESC MAR 2002)

Monthly services invoices shall be mailed directly to the Accounting and Finance Office after self-certification. All other invoices are mailed to the Contract Administration Office (CAO) after Quality Representative (QR) certification. Specific procedures follow:

- (a) **MONTHLY INVOICES.** Contractors shall present invoices for monthly services (original and 3 copies) directly to the following Accounting and Finance Office within one month following the performance of the respective services:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER
STOCK FUND DIRECTORATE
FUELS ACCOUNTING AND PAYMENTS DIVISION
ATTN: DFAS-CO-BVDFB/CC
P.O. BOX 182317
COLUMBUS, OH 43218-2317

Each invoice will be certified by an official of the company in the following manner:

"I certify that the services were performed, that the amounts reflected hereon are in conformance with the contract, and that the amounts are correct and proper for payment."

Signature _____
PRINTED NAME AND TITLE

(b) ALL OTHER INVOICES.

(1) Contractors shall address invoices to the Accounting and Finance Office listed in (a) above.

(2) Contractors shall certify that the invoice is true and correct and shall attach supporting documentation (e.g., subcontractor bills or invoices) for cost reimbursement invoices.

(3) Contractors shall then present the invoice (original and 4 copies) to the cognizant QR for certification that the invoice is true and correct to the best of the QR's knowledge and that the supplies or services included on the invoice have been provided.

(4) Last, Contractors shall submit the invoice to the applicable CAO address below for approval and for processing to the Accounting and Finance Office for payment. Upon mutual agreement between the Contractor and the QR, the QR may submit the invoice directly to the CAO after certification. The Administrative Contracting Officer (ACO) may authorize the Contractor to send certified invoices directly to the Accounting and Finance Office, concurrent with a copy to the applicable CAO address below. Such ACO authorization must be specifically provided in the contract or modification thereto.

CONUS Contract Locations

ATTN DESC-FPA FPB ROOM 2945
DEFENSE ENERGY SUPPORT CENTER
8725 JOHN J KINGMAN RD SUITE 4950
FORT BELVOIR VA 22060-6222

OCONUS Contract Locations

ATTN DESC-FPC ROOM 2945
DEFENSE ENERGY SUPPORT CENTER
8725 JOHN J KINGMAN RD SUITE 4950
FORT BELVOIR VA 22060-6222

(c) **OVERTIME.** When the Contractor is authorized by the designated Defense Energy Region (DER) to perform services in excess of normal working hours, the Government will reimburse the Contractor as described in (1) and (2) below. Each invoice for overtime will specify the number of people working, their employment classification, number of hours worked, and the hourly rate of compensation. The written authorization from the DER must be attached to the invoice. (The authorization for overtime may be given initially by telephone, but later must be provided in writing by the DER to the Contractor.) Follow instructions given in (b) above for submission of overtime invoices.

(1) **GOCO (Government-Owned, Contractor-Operated).** The Government will reimburse actual overtime labor rate paid times actual overtime hours, plus social security taxes, insurance, and fringe benefits. No profit or G&A (general and administrative expenses) will be allowed. (Profit and G&A should be included in the monthly services charge based on the dollars estimated for the overtime line item.)

(2) **COCO (Contractor-Owned, Contractor-Operated).** The Government will reimburse at the rate specified in the Schedule clause.
(DESC 52.232-9FF5)

G150.03 ELECTRONIC SUBMISSION OF INVOICES FOR PAYMENT (EDI) (DESC OCT 1998)

(a) SUBMISSION OF ELECTRONIC INVOICES.

(1) **APPLICABILITY.** Electronic submission of invoices applies only to DoD items paid for with DLA/DESC funds by DFAS Columbus, OH.

(2) **REQUIREMENTS.** Prior to submission of electronic invoices via electronic data interchange (EDI) under this clause, the Contractor and DESC must have a signed Trading Partner Agreement (TPA) and Addendum 810, Invoices; and Addendum 824, Invoice Returns Notification.

(b) INVOICING ADDRESS.

(1) Electronic invoices for items paid for with DLA/DESC funds, as cited on the order form (DD Form 1155/ Standard Form 1449), shall be electronically submitted to DTDN/S39008 or GOVDP/S39008.

(2) **SUBMISSION OF INVOICES.** Invoices submitted electronically shall be in accordance with the provisions of the signed TPA and Addendum 810. Electronic invoices submitted shall be American National Standards Institute (ANSI) Accredited Standard Committee (ASC) X12 810 Transaction Sets. These 810 Transactions Sets shall follow the AVNET Convention as specified by the Petroleum Industry Data Exchange. The electronic invoice shall contain all fields required by the AVNET Convention, including

the contract number, order number, shipment number, item number, and contract description of supplies, services, sizes, quantities, unit price, and extended total.

(c) **PAYMENT.** Unless otherwise expressly specified in the Schedule, payment of invoices will be made in U.S. currency.

(d) **CERTIFICATION OF RECEIPT.** See the SUBMISSION OF INVOICES FOR PAYMENT clause for receipt documentation.

(e) **INVOICING FOR DETENTION/DEMURRAGE COSTS.** Detention costs are allowable only on tank truck deliveries. Detention/demurrage costs are the sole responsibility of the activity incurring them. Invoices for detention or demurrage costs will be submitted by the Contractor directly to the activity receiving the product.

(DESC 52.232-9FH5)

THIS CLAUSE APPLIES ONLY TO DESC-FUNDED ITEMS.

G150.11 SUBMISSION OF INVOICES BY FACSIMILE (DESC DEC 2001)

NOTE 1: FOR GROUND FUELS (PC&S) CONTRACTS: This clause applies only to items paid by DFAS Columbus for DoD Activities.

NOTE 2: See paragraph (c) for facsimile invoicing for DETENTION/DEMURRAGE costs.

NOTE 3: INVOICES WILL REFLECT QUANTITIES IN WHOLE NUMBERS AND SHALL BE ROUNDED AS APPLICABLE. Example: 7,529.4 = 7,529 or 7,529.5 = 7,530.

(a) **IMPORTANT NOTICE:** Contractors who select the facsimile (FAX) method of invoicing prior to award in accordance with the FACSIMILE INVOICING or the FACSIMILE OR ELECTRONIC INVOICING provision must do so for all invoices. Failure to comply with the requirements of this clause will result in revocation of the Contractor's right to submit invoices by the FAX method.

(b) **INSTRUCTIONS FOR SUBMITTING INVOICES VIA FACSIMILE.**

(1) When the Contractor has elected to transmit invoices by FAX, it is responsible for validating receipt of its FAXed invoice. Because DFAS-BVDP/CC cannot be held accountable for transmissions not received, the Contractor must verify transmission/receipt of its FAX by telephoning Customer Service (DFAS-BVDP/CC) at **(800) 756-4571 (Options 2 and 2)**. Personnel are available to verify receipt of FAXed transmissions between 8 a.m. and 5 p.m., EST/EDT, Monday through Friday, excluding Federal holidays.

(2) The DFAS-BVDP/CC FAX number is **(614) 693-0670/0671/0672**.

(3) The Contractor shall include its FAX number on each document transmitted.

(4) After transmitting the original invoice, the Contractor shall mark that invoice "**ORIGINAL INVOICE - FAXED**" and retain it. The hard copy is **not** required for payment and shall **not** be mailed to the payment office unless DFAS-BVDP/CC specifically requests it.

(5) **F.O.B. DESTINATION DELIVERIES.**

(i) **CERTIFICATION OF RECEIPT.**

(A) Receiving activity personnel will certify the receipt of fuel by preparing and signing one of the following documents:

(a) The SF 1449, Solicitation/Contract/Order for Commercial Items; or

(b) The DD Form 1155, Order for Supplies or Services; or

(c) The DD Form 250, Material Inspection and Receiving Report; or

(d) The DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report (for tanker and barge deliveries only).

(B) Payments to the Contractor will be based on the receipt of the "paying copies" of the receiving report to DESC-FII, Fort Belvoir, VA, and payment will be made in accordance with the terms of the contract.

(ii) **PC&S DELIVERIES.**

(A) Overbillings--

(a) That are less than or equal to 0.5 percent of the quantity listed on the receiving document will be paid as originally invoiced by the Contractor when the overbilled quantity is solely a result of a difference in measurement techniques.

(b) That exceed 0.5 percent of the quantity listed on the receiving document will be paid based on the quantity as determined by the activity and annotated on the activity's receiving document.

(B) Underbillings will be paid as invoiced.

(C) Notwithstanding any permissible variation percentage, payment is authorized for a percentage not to exceed 120 percent of the ordered quantity. Payment shall be made for quantity within this allowable variation listed on the receiving document as received and accepted by the activity and invoiced by the Contractor.

(6) F.O.B. ORIGIN DELIVERIES - RECEIVING REPORTS.

(i) When FAXing an **invoice** for f.o.b. origin deliveries, the Contractor shall also FAX a copy of the applicable receiving report to DESC-FII, Room 2933, Fort Belvoir, VA, for GROUND FUELS (PC&S) DELIVERIES. DESC-FII's FAX number is **(703) 767-9380**. The receiving report shall be transmitted no later than two working days after each delivery.

(ii) The following forms, signed by the Quality Representative (QR), are acceptable receiving reports for f.o.b. origin deliveries:

(A) DD Form 250 (Material Inspection and Receiving Report); or

(B) DD Form 250-1 (Tanker/Barge Material Inspection and Receiving Report).

(iii) The signed copy, which certifies acceptance by the QR of the product prior to submission of the invoice, will have the following information stamped, printed, or typed on it: **"ORIGINAL RECEIVING REPORT FOR PAYMENT OF INVOICE."**

(c) **INVOICING DETENTION/DEMURRAGE COSTS VIA FACSIMILE.** Detention/demurrage costs, allowable only on tank truck deliveries (not applicable to multiple drop tank truck or any tank wagon deliveries) and barge/tanker deliveries, will be the sole responsibility of the activity incurring them. Invoices for detention/demurrage costs will be submitted by the Contractor directly to the activity receiving the product. These provisions are applicable to DLA-owned/capitalized as well as non-DLA-owned/noncapitalized products. If the receiving activity is an Army activity, a copy of the detention/demurrage cost invoice must also be furnished to the following address:

COMMANDER US ARMY PETROLEUM CENTER
ATTN SATPC-L
NEW CUMBERLAND PA 17070-5008

(DESC 52.232-9FG5)

SECTION H – SPECIAL CONTRACT REQUIREMENTS

H3.01 EPA TESTING OF UNDERGROUND TANKS (DESC JAN 1992)

If the "volumetric" method is used for annual EPA testing of underground tanks, the "topping off" of tanks for this test is outside the scope of DESC requirements contracts. (DESC 52.216-9FF1)

H11 GUARD SERVICE (DESC MAR 1982)

(a) In the event the Government requires guard service and/or other protective services or facilities not otherwise provided by the Contractor pursuant to the terms of this contract, the Government shall have the right--

(1) To provide such service; or

(2) To require the Contractor to provide such guard service; and/or

(3) To require the Contractor to provide such other protective services or facilities.

(b) The actual cost of providing said services or facilities under (2) and/or (3) above will be for the account of the Government and will be recognized by a modification to this contract.

(DESC 52.211-9FK1)

H19.01 REPORTING AND CONTAINING OIL SPILLS (OVERSEAS STORAGE) (DESC JAN 1982)

(a) Immediately upon the discovery of a product spill, leak, or seepage involving Defense Energy Support Center owned product, the Contractor shall notify, by telephone, (1) the Quality Representative; (2) the designated Defense Fuel Region; and (3) the Administrative Contracting Officer.

(b) Immediately upon discovery of a product spill, leak, or seepage, the Contractor shall take all practicable measures available to contain and prevent further spreading of such spill, leak, or seepage. Spill prevention and control measures taken by the Contractor will be in compliance with all applicable laws and regulations.

(DESC 52.223-9F35)

H20 REPORTS OF GOVERNMENT PROPERTY (MAY 1994)

- (a) The Contractor shall provide an annual report--
 - (1) For all DoD property for which the Contractor is accountable under the contract;
 - (2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form; and
 - (3) In duplicate, to the cognizant Government property administrator, no later than October 31.
- (b) The Contractor is responsible for reporting all Government property accountable to this contract, including that at subcontractor and alternate locations. (DFARS 252.245-7001)

SECTION I – CONTRACT CLAUSES

II DEFINITIONS (DEC 2001)

As used throughout this contract, the following terms shall have the meaning set forth below.

(a) **Head of the agency** (also called **agency head**) or **Secretary** means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term **authorized representative** means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) **Commercial component** means any component that is a commercial item.

(c) **Commercial item** means--

(1) Any item, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in subparagraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirement under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in subparagraph (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. **Minor modifications** means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of subparagraph (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if--

(i) Such services are procured for support of an item referred to in subparagraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) **Component** means any item supplied to the Federal Government as part of an end item or of another component.

(e) **Nondevelopmental item** means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in subparagraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of subparagraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) **Contracting Officer** means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term **subcontracts** includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(FAR 52.202-1)

11.01-4 DEFINITIONS (CONT'D) (STORAGE) (DESC JAN 1996)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) **Quality Representative (QR)** includes the terms Quality Assurance Representative (QAR) and Quality Surveillance Representative (QSR).

(1) The QAR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing petroleum products and services.

(2) The QSR is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing services.

(b) **Petroleum storage facilities** shall include --

(1) The tanks enumerated in the Schedule and all installations, fixtures, and equipment required for safe and expeditious movement of petroleum products into and out of such tanks;

(2) Fencing, flood lighting, dikes or fire walls, suitable fire fighting plan and watchman services to the extent necessary to comply with local regulations and standard commercial practices; and

(3) Whatever unloading and loading facilities that may be required to receive and ship product by the method(s) specified in the Schedule.

(c) The terms **isolated system** and **segregated system** mean a system that has a positive separation from other systems in a tank farm through the means of blind flanges, locked double-block and bleed-type valves, etc.

(d) **Dedicated system** means a self contained, single product system with no pipeline connections to any other system in the facility.

(e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

(f) **Shell capacity** means the gross volumetric capacity of the storage tank as determined from tank calibration.

(g) **Fill capacity** means the capacity of the storage tank when filled to the maximum fill level, i.e., the highest point to which a petroleum storage tank may be filled with product, allowing for product expansion and other safety considerations.

(h) **Product or products** means the Government-owned petroleum product(s) within one of the following categories which the Schedule indicates the Contractor is to receive, store, handle, and ship under this contract:

(1) Crude oil shall include any unrefined petroleum in its natural state;

(2) Light fuels includes any grade of the following distillate fuel types: aircraft engine fuels, motor gasoline, naphtha and like solvents, kerosene, diesel fuels and numbers 1 and 2 heating fuels;

(3) Heavy fuels includes number 4 heating fuel and all residual type fuels;

(4) Lubricating oil includes all grades of such product utilized in aircraft, automotive, diesel, and marine engines;

(5) Packaged products means all products packaged in containers of 55-gallon capacity or less.

(i) **Unit of quantity** means--

(1) The U.S. gallon of 231 cubic inches;

(2) The barrel of 42 U.S. gallons;

- (3) The long ton of 2240 pounds; and
- (4) The pound of 16 ounces, depending upon the unit shown in the

Schedule.

(j) **Description of services to be performed** as stated in the CHANGES - FIXED PRICE clause is defined to include, but is not limited to, the following:

- (1) The grade or type of product by specification;
- (2) The regular working hours set forth in the schedule;
- (3) The method of receiving or shipping.
- (4) The specifications of Contractor-furnished equipment,
- (5) The provisions of the General Delivery Conditions as amended;
- (6) The number of the Contractor-furnished units (equipment);
- (7) The response time;

- (8) The estimated truck movement; and
- (9) The MERT hours.

(k) **Equipment or delivery and servicing equipment** as used herein means those fuel and/or oil servicing units such as tank trucks, tank trailers, mobile hose carts, pantographs (fixed or mobile), small trailers and drums together with the necessary prime movers.

(l) **Fuel and Oil** used herein means aircraft reciprocating engine fuel, aircraft turbine and jet engine fuel, aircraft reciprocating engine oil, and jet engine oil.

(m) **Response time** is defined as that interval of time between the time a call is placed on the Contractor to service an aircraft and the time the Contractor's equipment is in position to service said aircraft.

(n) For purposes of this contract, the term **truck movement** as set forth above is defined to be any of the following:

- (1) The movement of a refueler, defueler, or oiler to, and servicing of, an aircraft. In the event that more than one aircraft is serviced as a result of one service call, each individual aircraft servicing shall be considered a "truck movement."
- (2) The movement of a combination refueler/oiler which services an aircraft with both products. Such movement shall be considered a 1 1/2 "truck movement."
- (3) The movement of a combination refueler/oiler which services an aircraft with oil only. Such movement shall be considered one "truck movement."
- (4) Servicing of group support equipment, small tanks, and/or other units as designated by the Commanding Officer, with either jet fuel or AVGAS, shall count as truck movements if dispatched separately. Each such servicing, if performed in multiples or in conjunction with aircraft fuel delivery, shall be counted as a 1/5 "truck movement" with the exception of the first which will count as one "truck movement."
- (5) The movement of a refueler, defueler, or oiler as the result of a service call which is not completed, due to no fault of the Contractor.
- (6) The movement of a refueler, defueler, or oiler to a tank farm for purposes of refilling or discharging product as applicable. With regard to refueler refilling, only those refills totaling 1,000 gallons or more per vehicle shall be considered a truck movement. The Commanding Officer may, at his discretion, exercise control and supervision over the refilling/discharging operation.

(DESC 52.202-9F35)

11.02 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, PROVIDED there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form Number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form PROVIDED there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different from the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(FAR 52.253-1)

11.06 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not

include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

- (c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—
- (1) Cost or pricing data if required in accordance with subpart 15.403-4 of the Federal Acquisition Regulation (FAR);
- and
- (2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.
- (d) The certification requirement in paragraph (b) of this clause does not apply to—
- (1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or
- (2) Final adjustments under an incentive provision of the contract.
- (DFARS 252.243-7002)

THIS CLAUSE DOES NOT APPLY TO FOREIGN VENDORS PERFORMING OUTSIDE THE UNITED STATES.

11.07 REQUIRED CENTRAL CONTRACTOR REGISTRATION (NOV 2001)

- (a) **DEFINITIONS.** As used in this clause--
- (1) **Central Contractor Registration (CCR) database** means the primary DoD repository for Contractor information required for the conduct of business with DoD.
- (2) **Data Universal Numbering Systems (DUNS) number** means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.
- (3) **Data Universal Numbering System + 4 (DUNS+4) number** means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.
- (4) **Registered in the CCR database** means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.
- (b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.
- (2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (3) ***Lack of registration in the CCR database will make an offeror ineligible for award.***
- (4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (c) ***The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.***
- (d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423 or via the Internet at <http://www.ccr.gov>.

(DFARS 252.204-7004)

11.19 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1). clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any DOD FAR Supplement Regulation (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.
- (FAR 52.252-6)

11.20 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these addresses:

FAR/DFARS: <http://farsite.hill.af.mil>
FAR/DFARS: <http://www-far.npr.gov>
DLAD: <http://www.procregs.hq.dla.mil/icps.htm>

(FAR 52.252-2)

11.22 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- (a) The Government, at its election, may reduce the price of a fixed-price-type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
- (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
 - (3) For cost-plus-award-fee contracts--
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may--
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.
- (FAR 52.203-10)

11.22-1 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- (a) If the Government receives information that a Contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal year 1996 (Pub. L. 104-106), the Government may--
- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract. (FAR 52.203-8)

11.24 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) DEFINITIONS.

Agency, as used in this clause, means executive agency as defined in 2.101.

Covered Federal action, as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and tribal organization, as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Reasonable compensation, as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment, as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient, as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An

officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) PROHIBITIONS.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) AGENCY AND LEGISLATIVE LIAISON BY OWN EMPLOYEES.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(a) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(b) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(a) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(b) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(c) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) PROFESSIONAL AND TECHNICAL SERVICES.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(a) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(b) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving

that Federal action. Persons other than officers or employees of a person requesting or Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(a) and (b) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) **DISCLOSURE.**

(A) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payments using nonappropriated funds (to INCLUDE profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subdivision (A) of this clause. An event that materially affects the accuracy of the information reported includes--

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(c) A change in the officer(s), employee(s), or Members(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) **AGREEMENT.** The Contractor agrees not to make any payment prohibited by this clause.

(v) **PENALTIES.**

(A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) **COST ALLOWABILITY.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**12 CONTROL OF GOVERNMENT PERSONNEL WORK
PRODUCT (APR 1992)**

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(DFARS 252.204-7003)

12.01 CHANGES - FIXED-PRICE (ALT I) (AUG 1987/APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(FAR 52.243-1/Alt I)

13 EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(FAR 52.232-11)

13.01 PROMPT PAYMENT (FEB 2002)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in Sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) INVOICE PAYMENTS.

(1) DUE DATE.

(i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) CERTAIN FOOD PRODUCTS AND OTHER PAYMENTS.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities, and dairy products; edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat and meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, any perishable poultry

meat food product, fresh eggs, and any perishable egg product, as close as possible to, but no later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in Section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in Section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) **CONTRACTOR'S INVOICE.** The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the

invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils) with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) **TAXPAYER IDENTIFICATION NUMBER (TIN).** The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) **ELECTRONIC FUNDS TRANSFER (EFT) BANKING INFORMATION.**

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer - Central Contractor Registration; or 52.232-34, Payment by Electronic Funds Transfer - Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) **INTEREST PENALTY.** The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the

Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) COMPUTING PENALTY AMOUNT. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If the actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulation at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at 52.233-1, Disputes.

(6) DISCOUNTS FOR PROMPT PAYMENT. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(7) ADDITIONAL INTEREST PENALTY.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1.00 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor shall make a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(a) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(b) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(c) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(a) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(b) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) CONTRACT FINANCING PAYMENT. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) FAST PAYMENT PROCEDURE DUE DATES. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) OVERPAYMENTS. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment. (FAR 52.232-25)

(a) Discounts for prompt payments will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As

an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when the Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

(FAR 52.232-8)

17 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) **DEFINITIONS.** As used in this clause—

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of **recovered material**. For paper and paper products, postconsumer material means **postconsumer fiber** defined by the U.S. Environmental Protection Agency (EPA) as—

(1) **Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or**

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) **Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.**

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as **recovered fiber** and means the following materials:

(1) Postconsumer fiber, and

(2) Manufacturing wastes such as—

(i) **Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and**

(ii) *Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.*

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. The lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(FAR 52.204-4)

18.02 ASSIGNMENT OF CLAIMS (ALT I) (JAN 1986/APR 1984)

(a) **The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.**

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(FAR 52.232-23/Alt I)

111.03 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in

this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the DISPUTES clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.249-8)

111.04 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the

bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of

the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.
(FAR 52.242-13)

112.01 DISPUTES (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) **Claim**, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in subsection (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) **The certification shall state as follows:** "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, that is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(FAR 52.233-1)

112.03 PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work

covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the DEFAULT, or the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; PROVIDED, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(FAR 52.233-3)

115.03 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment that has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;
- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (3) Such paid employment will not result in the displacement of employed workers, nor be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, nor impair existing contracts for services; and
- (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(FAR 52.222-3)

116.01 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (SEP 2000)

(a) **OVERTIME REQUIREMENTS.** No Contractor or subcontractor contracting employing laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) **VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.** The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the

rate \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) **WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.** The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) **PAYROLLS AND BASIC RECORDS.**

(1) The Contractor and its subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each such employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) **SUBCONTRACTS.** The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(FAR 52.222-4)

118 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) DEFINITIONS.

As used in this clause--

(1) **Arising out of a contract with the DoD** means any act in connection with--

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) **Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).**

(2) **Conviction of fraud or any other felony** means any conviction for fraud or a felony in violation of state or Federal criminal statutes whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) **Date of Conviction** means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, or fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(DFARS 252.203-7001)

118.02 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) **Segregated facilities**, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies, or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the EQUAL OPPORTUNITY clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the EQUAL OPPORTUNITY clause of this contract.

(FAR 52.222-21)

118.03 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records) and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontractor or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; PROVIDED, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1. (FAR 52.222-26)

118.06 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline posters prepared by the Office of the Inspector General, DoD.

(b) DoD Hotline posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports. (DFARS 252.203-7002)

120 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) (1) **Bona fide agency**, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) **Bona fide employee**, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) **Contingent fee**, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) **Improper influence**, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.
(FAR 52.203-5)

124 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(FAR 52.222-1)

127 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(FAR 52.203-3)

128.16 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) **Contract date**, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(1) **All applicable Federal, State, and local taxes and duties**, as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

(2) **After-imposed Federal tax**, as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

(3) **After-relieved Federal tax**, as used in this clause, means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.
(FAR 52.229-3)

128.21 TAXES - FOREIGN FIXED-PRICE CONTRACTS (JAN 1991)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) **Contract date**, as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Country concerned, as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

Tax and taxes, as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

All applicable taxes and duties, as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

After-imposed tax, as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax, as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Excepted tax, as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if

the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such

interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered

by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(FAR 52.229-6)

131.06 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; **provided** that this limitation shall not apply to--

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(FAR 52.232-9)

132 CANCELLATION UNDER MULTIYEAR CONTRACTS (OCT 1997)

(a) **Cancellation**, as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the DEFAULT clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause of this contract. The Contractor shall submit the claim promptly but no later than one year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by

which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include--

(1) Reasonable nonrecurring costs (see FAR Subpart 15.4) that are applicable to and normally would have been amortized in all supplies or services that are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized by the unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include--

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. Useful commercial life means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(FAR 52.217-2)

133 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause or a COST ACCOUNTING STANDARDS clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(FAR 52.232-17)

136.03 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(FAR 52.249-4)

143.01 LIMITATION OF LIABILITY - SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the

Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(FAR 52.246-25)

143.02 LIMITATION OF GOVERNMENT'S OBLIGATION (AUG 1993)

(a) Contract line items _____* through _____* are incrementally funded. For these items, the sum of \$_____* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For items identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those items for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those items beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract those items regardless of anything to the contrary in the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause. As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line items for convenience includes costs, profit, and estimated termination settlement costs for those items.

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least 90 days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause.

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance that will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of

delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the DISPUTES clause.

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the DEFAULT clause. The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the TERMINATION FOR CONVENIENCE OF THE GOVERNMENT clause.

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day) 199x	\$ _____
(month) (day) 199y	\$ _____
(month) (day) 199z	\$ _____

* To be inserted after negotiation.

(DFARS 252.232-7007)

172.02 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) DEFINITIONS. As used in this clause--

(1) **Components** means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) **Department of Defense (DoD)** means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) **Foreign-flag vessel** means any vessel that is not a U.S.-flag vessel.

(4) **Ocean transportation** means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) **Subcontractor** means a supplier, materialman, distributor, or vendor at any level below the prime Contractor whose contractual obligation to perform results from, or

(6) **Supplies** means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) **Supplies** includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, together with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items, construction materials; and the components of the foregoing.

(7) **U.S.-flag vessel** means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) (1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(a) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that is subcontracts for f.o.b. destination shipment);

(b) Are shipped in direct support of U.S. military contingency operations, exercises, or forces in humanitarian or peacekeeping operations; or

(c) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that--

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum--

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile messages or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet, if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION

CONTRACT LINE ITEMS

QUANTITY

TOTAL

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the PROMPT PAYMENT clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

- (h) The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that—
- (1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and
 - (2) Are for a type of supplies described in paragraph (b)(2) of this clause..

(DFARS 252.247-7023)

172.06 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the TRANSPORTATION OF SUPPLIES BY SEA clause of this contract, will be transported by sea, the Contractor--

- (1) Shall notify the Contracting Officer of that fact; and
- (2) Hereby agrees to comply with all the terms and conditions of the TRANSPORTATION OF SUPPLIES BY SEA clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

- (1) In all subcontracts under this contract, if this contract is a construction contract; or
- (2) If this contract is not a construction contract, in all subcontracts under this contract that are for—
 - (i) Noncommercial items; or
 - (ii) Commercial items that—

- (A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);
- (B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or
- (C) Are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

(DFARS 252.247-7024)

181 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ORDERING clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the ORDER LIMITATIONS clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after 30 days after the expiration of the ordering period.

(FAR 52.216-22)

THE FOLLOWING CLAUSE APPLIES ONLY TO UNRESTRICTED ITEMS AND, IF APPLICABLE, ANY TOTAL SMALL BUSINESS SET-ASIDE ITEMS.

184 REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ORDERING clause. Subject to any limitations in the ORDER LIMITATIONS clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ORDERING clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after **SIX MONTHS AFTER EXPIRATION OF THE ORDERING PERIOD.**

(FAR 52.216-21)

195 AUDIT AND RECORDS -- NEGOTIATION (JUN 1999)

(a) As used in this clause, **records** includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) **EXAMINATION OF COSTS.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing this contract.

(c) **COST OR PRICING DATA.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract, or modification.

(d) **COMPTROLLER GENERAL.**

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) **REPORTS.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating--

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) **AVAILABILITY.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(FAR 52.215-2)

196.02 PRICING ADJUSTMENTS (DEC 1991)

The term **pricing adjustment**, as used in paragraph (a) of the PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS, SUBCONTRACTOR COST OR PRICING DATA, and SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS clauses means the aggregate increases and/or decreases in cost plus applicable profits.

(DFARS 252.215-7000)

197 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor

shall require the subcontractor to submit cost or pricing data (actually or by specific unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS.

(FAR 52.215-12)

198 PROTECTING THE GOVERNMENT'S INTERESTS WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(FAR 52.209-6)

1100 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) DEFINITIONS.

(1) **Act**, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

(2) **Contractor**, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(3) **Service employee**, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as the terms are defined in Part 541 of Title

29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) **APPLICABILITY.** This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) COMPENSATION.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by

any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid in the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classification based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) **OBLIGATION TO FURNISH FRINGE BENEFITS.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) **MINIMUM WAGE.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) **SUCCESSOR CONTRACTS.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wage and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligations unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contractor was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) **NOTIFICATION TO EMPLOYEES.** The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) **SAFE AND SANITARY WORKING COMDITIONS.** The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) **RECORDS.**

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

- (i) For each employee subject to the Act--
 - (A) Name and address and social security number;
 - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction

of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) **PAY PERIODS.** The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.

(k) **WITHHOLDING OF PAYMENTS AND TERMINATION OF CONTRACT.** The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) **SUBCONTRACTS.** The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) **COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO SERVICE EMPLOYEES.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) **SENIORITY LIST.** Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) **RULINGS AND INTERPRETATIONS.** Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) **CONTRACTOR'S CERTIFICATION.**

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statement is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) **VARIATIONS, TOLERANCES, AND EXEMPTIONS INVOLVING EMPLOYMENT.** Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the

following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment and apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under two acts authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) **APPRENTICES.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) **TIPS.** An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(n) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) **DISPUTES CONCERNING LABOR STANDARDS.** The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives.
(FAR 52.222-41)

1102 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of

1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per

hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under the contract.

(FAR 52.222-43)

1102.01 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with--

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(FAR 52.222-44)

1102.02 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PAYROLL TAX ADJUSTMENT (DESC JUL 1988)

(a) The Contractor warrants that the prices set forth in this contract do not include any contingency allowance for increased costs for which adjustment is provided by this clause.

(b) When payroll taxes that are applicable to this contract by law (i.e., Workmen's Compensation, Federal Unemployment Insurance (FUI), State Unemployment Insurance (SUI), and Federal Insurance Compensation (FICA) rates) are revised or imposed after award, increasing or decreasing the Contractor's costs under this contract, the contract price or contract unit price will be adjusted to reflect the changes. This adjustment shall be limited to increases or decreases in payroll taxes and shall not include any amount for general and administrative cost, overhead, or profit.

(c) The Contractor shall notify the Contracting Officer of any increases or decreases claimed under this clause within 30 days after the effective date of the change in payroll taxes, unless this period is extended by the Contracting Officer in writing. In the case of any decrease in payroll taxes, if a Contractor fails to promptly notify the Contracting Officer, the Government retains the right to submit a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof that may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price shall be modified in writing. Pending agreement on or determination of any such adjustment and its effective date, the Contractor shall continue performance.

(d) The Contracting Officer or his authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(DESC 52.222-9F10)

1102.03 DRUG-FREE WORK FORCE (SEP 1988)

(a) DEFINITIONS.

(1) **Employee in a sensitive position**, as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) **Illegal drugs**, as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objective of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risk to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(DFARS 252.223-7004)

1102.04 DRUG-FREE WORKPLACE (MAR 2001)

(a) **DEFINITIONS.** As used in this clause--

(1) **Controlled substance** means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

(2) **Conviction** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

(3) **Criminal drug statute** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

(4) **Drug-free workplace** means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(5) **Employee** means an employee of a Contractor directly engaged in the performance of work under a Government contract. **Directly engaged** is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

(6) **Individual** means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration); or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (a)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment. (FAR 52.223-6)

1102.05 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A
DETERMINATION.

EMPLOYEE CLASS

MONETARY WAGE - FRINGE BENEFITS

SEE ATTACHMENT 2 – WAGE DETERMINATION

(FAR 52.222-42)

1103.01 SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offers shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, SERVICE CONTRACT ACT OF 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.
(FAR 52.222-47)

1114 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) GOVERNMENT-FURNISHED PROPERTY.

(1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) CHANGES IN GOVERNMENT-FURNISHED PROPERTY.

(1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) TITLE IN GOVERNMENT PROPERTY.

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the

provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) **USE OF GOVERNMENT PROPERTY.** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) **PROPERTY ADMINISTRATION.**

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) **ACCESS.** The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) **LIMITED RISK OF LOSS.** Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) **EQUITABLE ADJUSTMENT.** When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) **FINAL ACCOUNTING AND DISPOSITION OF GOVERNMENT PROPERTY.** Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) **ABANDONMENT AND RESTORATION OF CONTRACTOR'S PREMISES.** Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) **COMMUNICATIONS.** All communications under this clause shall be in writing.

(l) **OVERSEAS CONTRACTS.** If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively. (FAR 52.245-2)

1116 RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DESC APR 1997)

(a) Government-owned petroleum products received, stored, and transported under this contract are governed by the provisions of this clause.

(b) Title to any Government-owned petroleum products in the possession of or under the custody of the Contractor by reason of this contract, which is hereinafter referred to in this clause as "such property," shall at all times remain in the Government, and such property shall be used only for the purposes set forth in this contract. The Government shall at all times have access to the premises wherein any such property is located.

(c) The Contractor shall protect and preserve such property in a manner consistent with sound industrial practice.

(d) At the end of the contract period the Government may abandon any Government-owned petroleum products in place, at which time all obligations of the Government regarding such abandoned petroleum products shall cease. The contract price shall be reduced to reflect the fair market value of any abandoned petroleum products. If an agreement as to compensation for abandoned petroleum products cannot be reached in a timely manner, the Contracting Officer will make a formal determination. The decision will be subject to resolution in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.

(e) The Contractor shall not be liable for loss of or damage to all such property while in the possession of or under the custody of the Contractor by reason of this contract, or for expenses incidental to such loss or damage, except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto)--

(1) Which results from negligence, or bad faith, or willful misconduct of the Contractor, its employees, or agents; or

(2) Which results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but the Contractor in such case shall be responsible only to the extent of such insurance or reimbursement.

(f) Except for those risks assumed by the Contractor pursuant to subparagraph (e)(1) of this clause, the Contractor represents and warrants that the prices stated in the Schedule do not include the cost of insurance covering risk or loss of or damage to such property while in the possession of or under the custody of the Contractor by reason of this contract, nor any provision for a reserve to cover such risk. In the event the Contractor is reimbursed or compensated for any loss or damage to such property, it shall reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(DESC 52.245-9F25)

1119.04 PROPERTY CONTROL RECORDS (DOMESTIC) (DESC MAR 2001)

(a) INTRODUCTION.

(1) The Contractor shall prepare all documentation in accordance with the information and instructions provided herein. Documents and procedures are subject to change. The Defense Energy Region (DER) shall notify the Contractor at least 45 days prior to implementation of any change. The Contractor shall maintain property control records of Government-owned product in its possession or in its custody as provided herein. Such property control records shall be subject to audit by the U.S. Government.

(2) The Contractor shall provide the required transaction data shown under paragraph (b)(3) below.

(b) DEFENSE FUEL AUTOMATED MANAGEMENT SYSTEM (DFAMS) REPORTING REQUIREMENTS.

(1) The Contractor shall prepare all necessary documentation for each transaction affecting the inventory of Government-owned products in its possession by virtue of this contract. The Contractor shall transmit one copy of each document prepared to the appropriate DER or Inventory Control Point (ICP) on a daily basis as prescribed by the DER. A transaction sequence number will be shown in ink in the upper right hand corner of the document. The DER or ICP may also telephone the

Contractor on a daily basis (Monday through Friday, except holidays) to obtain information concerning transactions processed. The Contractor shall prepare and report each transaction in accordance with guidance provided in DoD 4140.25-M, Volume V,

Appendices A, B, and C, as appropriate (copies of the publication will be provided by the Contracting Officer upon request). The cognizant DER or ICP shall advise the Contractor of any changes in processing and reporting procedures.

(2) The Contractor shall prepare and report weekly and monthly (see DoD 4140.25-M, Volume II, Chapter 10, Sections C and K) inventories of Government-owned product in its possession. By the second work day of each month, the Contractor shall furnish the DER by facsimile the physical inventory quantity for each product stored at the facility to be followed up by a hard copy document (DD Form 1348-8) by the fifth of the month.

(3) Under the DFAMS, all transactions are recorded by Document Identifier Code (DIC). The most commonly used codes are explained below. The DER shall provide instructions for any transaction that may be processed but not shown below.

<u>DIC</u>	<u>TRANSACTION</u>	<u>DOCUMENT</u>
<u>SHIPMENTS</u>		
P21	Shipments from a DFSP to a Service/Agency	DD Form 250-1 DD Form 1348-7
P22	Shipments between DFSPs	DD Form 250-1 DD Form 1348-7
<u>RECEIPTS</u>		
P30	Receipts from a DESC Procurement Contract	DD Form 250/250-1
P31	Service/Agency Receipts from a DFSP	DD Form 250-1 DD Form 1348-7
P32	Receipts from a DFSP (receipts associated with P22 transactions)	DD Form 250-1 DD Form 1348-7
P39	Receipts from an end-user (with or without credit)	DD Form 250-1 DD Form 1348-7
<u>INVENTORY</u>		
P41	Physical Inventory	DD Form 1348-8
P42	Inventory Adjustments <ul style="list-style-type: none"> o Normal handling of variances (excessive) o Determinable losses such as spills, line breaks, nonrecoverable tank bottoms, major disasters, combat losses, etc. 	DD Form 1348-8
P43	Condition/Identity Change <ul style="list-style-type: none"> o Downgrade, regrade, or additive 	DD Form 1348-8

(4) The Contractor shall prepare inventory adjustment documents (DD Form 1348-8/P42 transactions) when inventory variances (discrepancies) exceed tolerance factors; determinable losses occur such as contaminated fuels, spills, pipeline

ruptures, explosions or loss of product samples (five gallons or more) shipped to laboratories. An explanation shall be provided on each inventory adjustment document explaining gain or loss in excess of tolerance. Each document shall be signed and dated by the Contractor's representative and the Quality Surveillance Representative (QSR). The QSR shall indicate whether he/she concurs or nonconcurs with the statement and shall provide an explanation for any nonoccurrence.

(5) At the end of each month (every six months for static storage), the cognizant DER or ICP shall forward one copy of the Inventory Reconciliation Document Register which lists all transactions processed during the period. The register will contain the following statement and shall be signed and dated by an authorized representative of the Contractor and the Government:

"I certify that the transactions recorded in this document register are complete and accurate. They represent all actions affecting this account during the month (past six months for static storage) in the sequence shown. Each transaction, except a final automatic reconciliation adjustment, is supported by a valid auditable source document."

(6) Within five days after receipt of the Inventory Reconciliation Document Register, the Contractor shall advise the cognizant DER or ICP in writing of any discrepancy and provide a detailed explanation of any gain or loss (P42) transaction in excess of tolerance. Further, the Contractor shall attach all supporting documents to the inventory document register and retain the entire package on file for future audits.

(c) OTHER REQUIREMENTS.

(1) **STORAGE TANK OUT OF SERVICE.** Prior to removing a storage tank from service, the Contractor shall immediately notify the Property Administrator by telephone, with follow-up confirmation in writing, providing the date and time the tank is scheduled to be removed from service. In addition, the Contractor shall provide the Property Administrator a written estimate of unrecoverable tank bottoms. The estimate will be reviewed and approved by the QSR prior to submission.

(2) **UNRECOVERABLE TANK BOTTOMS.** Prior to the end of the contract period, the Contractor shall provide the Property Administrator a written estimate of unrecoverable tank bottoms. The estimate will be reviewed and approved by the QSR prior to submission.

(3) **REPORTING FUEL ADDITIVES AND SLOP FUEL.** Government-owned fuel additives and slop fuel stock at the DFSP will be treated as separate and distinct items, and all transactions shall be documented as outlined herein. These products will be recorded in gallons and reported under the approved National Stock Number (NSN).

(a) An auditable identity change document (DD Form 1348-8) shall be used to account for bulk FSII blended with bulk fuel and fuel downgraded to slop. Fractions of a gallon cannot be used (e.g., if 1.5 gallons of FSII were injected, report 1 gallon and record the .5 until a whole gallon is used).

(b) Packaged additives such as COR, ASA, AS1, AD1, and CO1 shall be accounted for locally using a general log or ledger. As the additive is injected, record the amount in the log to track usage and inventory. No other documentation is required.

(4) **CREATION OF SHIPMENT TRANSACTIONS – CONUS ONLY.** As required and directed by the cognizant DER, storage Contractors shall create electronic shipment transactions using the USBank POWERTRACK on-line freight payment system. The cognizant DER shall advise Contractors of any changes in processing and reporting procedures. Contractors shall contact the cognizant DER when additional guidance is required.

(5) **STATEMENT OF AUTHORIZED SIGNATURES.** The Contractor shall furnish the Property Administrator a statement containing the names and handwritten signatures of persons authorized by the Contractor to receive and accept Government-owned product or property.

(6) **RETENTION OF SUPPORTING DOCUMENTS.** The Contractor shall retain one copy of the ordering activities' requisitions for a period of two years or until the expiration of this contract, whichever is sooner.

(7) **CHANGE IN DFSP OPERATOR.** Transfer of residual inventory from expired contracts will be made regardless of whether there is a change in Contractors. The transfer of DFSP product will be accomplished as follows:

(i) The outgoing Contractor, the new Contractor, and the QSR will jointly gauge all tanks and will calculate the physical inventory.

(ii) Upon completion of the inventory, a DD Form 1348-8 will be completed for each grade of fuel.

(iii) The following certification will be typed on each DD Form 1348-8 and signed by the appropriate individuals:

"The inventory recorded on this DD Form 1348-8 has been transferred from contract
 (old number) to contract (new number) on (date) ."

Signature (Outgoing Contractor) / (New Contractor) "

(iv) The Contractor shall telephone this information into the DER Page 67 of 107 and mail one copy of each DD Form 1348-8 to the DER.

(v) The DER or ICP shall mail three copies of the Inventory Reconciliation Document Register covering the transfer month to the outgoing Contractor. The outgoing Contractor shall apply appropriate certification to the Inventory Reconciliation Document Register and shall retain one copy, provide one copy to the new Contractor, and return the third copy to the DER.

(8) **RETENTION OF ACCOUNTABLE RECORDS AND DOCUMENTS.** All records and documents identified above are DESC-accountable records and must be retained for two years after expiration of the contract.

(DESC 52.245-9F30)

1129 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(FAR 52.236-14)

1131 INSURANCE - WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(FAR 52.228-5)

1132.02 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

(FAR 52.215-8)

1136 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Public Law 101-510, section 831, as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(FAR 52.244-5)

1147 DEMURRAGE (DESC NOV 1989)

Subject to paragraph (c) of the DEFAULT clause, the Contractor shall pay to the vessel operator or carrier, or reimburse the Government for, any demurrage incurred by reason of the Contractor's failure to comply with the provisions of this contract.

1168 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) **DEFINITIONS.** As used in this clause--

All employment openings includes all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who--

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) **GENERAL.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) **LISTING OPENINGS.**

(1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) **APPLICABILITY.** This clause does not apply to the listing of employment openings that occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) POSTINGS.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) NONCOMPLIANCE.

If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) SUBCONTRACTS.

The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(FAR 52.222-35)

1169 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date (1) as of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) **SUBCONTRACTS.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(FAR 52.222-37)

1170 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small

business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) DEFINITIONS. As used in this contract--

(1) **HUBZone small business concern** means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(2) **Service-disabled veteran-owned small business concern—**

(i) Means a small business concern—

(A) Not less than 51 percent of which is owned by one or more service-disabled or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(ii) **Service-disabled veteran** means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(6).

(3) **Small business concern** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(4) **Small disadvantaged business concern** means a small business concern that represents, as part of its offer, that—

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR Part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

(5) **Veteran-owned small business concern** means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) The management and daily business operations of which are controlled by one or more veterans.

(6) **Women-owned small business concern** means a small business concern--

(i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(FAR 52.219-8)

1171 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000)

(a) This clause does not apply to small business concerns.

(b) DEFINITIONS. As used in this clause--

(1) **Commercial item** means a product or service that satisfies the definition of commercial items in section 2.101 of the Federal Acquisition Regulation.

(2) **Commercial plan** means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

(3) **Individual contract plan** means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

(4) **Master plan** means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

(5) **Subcontract** means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of --

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns; and

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns; and

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) Veteran-owned small business concerns,

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns;

(v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing & Access Network (PRO-Net) of the Small Business Administration, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--

(i) Small business concerns;

(ii) Veteran-owned small business concerns,

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns, and

(v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled UTILIZATION OF SMALL BUSINESS CONCERNS in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and if not, why not;

(B) Whether veteran-owned small business concerns were solicited and if not, why not;

(C) Whether HUBZone small business were solicited and if not, why not;

(D) Whether small disadvantaged business concerns were solicited and if not, why not;

(E) Whether women-owned small business concerns were solicited and if not, why not, and

(F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations,

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc., and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small businesses, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime Contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with--

(1) The clause of this contract entitled UTILIZATION OF SMALL BUSINESS CONCERNS; or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semiannually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(FAR 52.219-9)

1171.01-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) **DEFINITIONS.** As used in this clause--

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any **Native** as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., Chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a prime Contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall agree to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the--

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
ATTN: Chief, Division of Contracting and Grants Administration
1849 C Street, NW, MS-2626-MIB
Washington, DC 20240-4000

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) *The Contractor may request an adjustment under the Indian Incentive Program to the following:*

- (i) The estimated cost of a cost-type contract;
- (ii) The target cost of a cost-plus-incentive-fee prime contract;
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is five percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and availability of funds, will authorize an incentive payment of five percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(FAR 52.226-1)

1171.01-2 SMALL BUSINESS SUBCONTRACTING PLAN (ALT II) (OCT 2000/OCT 2000)

(a) This clause does not apply to small business concerns.

(b) **DEFINITIONS.**

(1) **Commercial item** means a product or service that satisfies the definition of commercial items in section 2.101 of the Federal Acquisition Regulation.

(2) **Commercial plan** means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

(3) **Individual contract plan** means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

(4) **Master plan** means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

(5) **Subcontract** means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, that separately addresses subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as

subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of --

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns;
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns; and
- (iv) Total dollars planned to be subcontracted to HUBZone small business concerns; and
- (v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
- (vi) Total dollars planned to be subcontracted to women-owned small business concerns

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns,
- (iii) HUBZone small business concerns;
- (iv) Small disadvantaged business concerns;
- (v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing & Access Network (PRO-Net) of the Small Business Administration, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns,
- (iii) HUBZone small business concerns;
- (iv) Small disadvantaged business concerns, and
- (v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled UTILIZATION OF SMALL BUSINESS CONCERNS in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

- (A) Whether small business concerns were solicited and if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and if not, why not;
- (C) Whether HUBZone small business were solicited and if not, why not;
- (D) Whether small disadvantaged business concerns were solicited and if not, why not;
- (E) Whether women-owned small business concerns were solicited and if not, why not, and
- (F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

- (A) Trade associations;
- (B) Business development organizations, and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

- (A) Workshops, seminars, training, etc., and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small businesses, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime Contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with--

(1) The clause of this contract entitled UTILIZATION OF SMALL BUSINESS CONCERNS; or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) **Standard Form 294, Subcontracting Report for Individual Contracts.** This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) **Standard Form 295, Summary Subcontract Report.** This report encompasses all the contracts with the awarding agency. It must be submitted semiannually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(FAR 52.219-9/Alt II)

1171.03 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (APR 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN clause of this contract.

(a) DEFINITIONS.

(1) **Historically black colleges and universities**, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

(2) **Minority institutions**, as used in this clause, means institutions meeting the requirements of Section 31046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when--

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation; and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who Are Blind or Severely Disabled (41 U.S.C. 46-48) may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protégé Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(1) Protégé firms that are qualified organizations employing the severely handicapped; and

(2) Former protégé firms that meet the criteria in Section 831(g)(4) of Public Law 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans that specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantage, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(DFARS 252.219-7003)

1171.07 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)

(a) **Failure to make a good faith effort to comply with the subcontracting plan**, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled SMALL BUSINESS SUBCONTRACTING PLAN, or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled SMALL BUSINESS SUBCONTRACTING PLAN, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled DISPUTES, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(FAR 52.219-16)

1176 COST ACCOUNTING STANDARDS (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--

(1) **(CAS-covered Contracts Only).** By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modification to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the CHANGES clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms Page 79 of 107

and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; PROVIDED, that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the CHANGES clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904, or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirements shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(FAR 52.230-2)

1176.03 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standards - Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR 9904.

(2) **(CAS-covered Contracts only).** If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3) (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the CHANGES clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904, and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that--

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(FAR 52.230-3)

1176.05 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause.

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change that identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, COST ACCOUNTING STANDARDS; or subparagraph (a)(3) and subdivision (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or with subparagraph (a)(3) of the clause as FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or by subparagraph (a)(4) at FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, COST ACCOUNTING STANDARDS; or subparagraph (a)(3) and subdivision (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled

COST ACCOUNTING STANDARDS or COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION, that have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or with subparagraph (a)(3) of the clause at FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION, and FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, COST ACCOUNTING STANDARDS, and FAR 52.230-5, COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTION; or by subparagraph (a)(4) of the clause at FAR 52.230-3,

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES, shall identify the cost impact on each separate CAS-covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with subparagraph (a)(3) or (a)(4) of the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5--

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(FAR 52.230-6)

1180.02 ENVIRONMENTAL PROTECTION (STORAGE) (DESC MAY 1987)

The Contractor agrees to conform to all laws and regulations relating to the protection of the environment in effect on the date the contract is awarded, which are applicable to its operation in the performance of this contract. The Contractor further agrees to conform to any laws or regulations enacted after contract award that are applicable to its operation in the performance of this contract. In the event that conformance with any such new laws or regulations causes an increase or decrease in the operating cost, the Contractor and the Government will negotiate an equitable adjustment in the contract price. Failure to agree on an equitable adjustment in the contract price shall be a dispute concerning a question of fact within the meaning of the DISPUTES clause of this contract; however, nothing in this clause shall excuse the Contractor from implementing any such laws or regulations. The Contractor shall proceed with performance of this contract, unless so advised in writing by the Contracting Officer.

(DESC 52.223-9F25)

1181 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) **GENERAL.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organization structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leave of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) POSTINGS.

- (1) The Contractor agrees to post employment notices stating--
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual or may lower the posted notice so that it may be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) **NONCOMPLIANCE.** If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) **SUBCONTRACTS.** The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant to enforce the terms, including action for noncompliance.

(FAR 52.222-36)

1198 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply. (DFARS 252.243-7001)

1203 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract. (DFARS 252.231-7000)

1209.01 OPTION TO RENEW (SERVICES) (DESC APR 1997)

The Government shall have the option to renew this contract upon the same terms and conditions for three successive periods of five each. The Government shall issue written notice of its exercise of this option to renew at least 30 days prior to the expiration date of this contract or any renewal thereof.

(DESC 52.217-9F70)

1209.03 EXTENSION PROVISION (STORAGE) (DESC SEP 1991)

The Government shall have the right to extend this contract upon the same terms and conditions on a month-by-month basis for a total of no more than six months. Notice of extensions may be furnished any time prior to the expiration of this contract or any extensions thereof. The foregoing extensions may be exercised by the Government only if (a) a decision is made by the Government that the additional time is required to deplete the Government-owned stocks stored in the facility, (b) a contract for follow-on services is terminated for default by the Government prior to commencement of services, or (c) where the extension is required to sustain performance because of difficulties encountered in award of the follow-on contract.

(DESC 52.217-9F40)

1209.07 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within thirty (30) days, **PROVIDED**, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) **The total duration of this contract, including the exercise of any options under this clause, shall not exceed 30 September 2023 .**

(FAR 52.217-9)

1211 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from start of the contract start date through contract completion date.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(FAR 52.216-18)

1225 PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if--

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(FAR 52.232-1)

1229 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract that exceed \$100,000.

(FAR 52.203-6)

1242 INTEGRITY OF UNIT PRICES (OCT 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

(FAR 52.215-14)

1251 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) DEFINITIONS.

(1) **Kickback**, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) **Person**, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) **Prime Contract**, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) **Prime Contractor**, as used in this clause, means a person who has entered into a prime contract with the United States.

(5) **Prime Contractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(6) **Subcontract**, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) **Subcontractor**, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

(8) **Subcontractor Employee**, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act) prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under the prime contract, monies withheld, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of

this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract that exceed \$100,000. (FAR 52.203-7)

1255 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation, except those for commercial items.
(DFARS 252.209-7000)

1285 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or a subsidiary of a firm, that is identified on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
(DFARS 252.209-7004)

1400.09 SUBCONTRACTS (ALT I) (AUG 1998/AUG 1998)

(a) **DEFINITIONS.** As used in this clause--

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting--
 - (A) The principal elements of the subcontract price negotiations;

- (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason why cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

SECTION J – LIST OF ATTACHMENTS

FORM	TITLE	LOCATION
DD1707	INFORMATION TO OFFERORS OR QUOTERS	COVER SHEET
SF33	SOLICITATION, OFFER AND AWARD (REV. 9-97)	PAGE 1
	TESTING REQUIREMENT	ATTACHMENT 1
	DEPARTMENT OF LABOR WAGE DETERMINATIONS	ATTACHMENT 2
	OFFEROR SUBMISSION PACKAGE	ATTACHMENT 3

SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

K1.01-5 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that--

(a) It--

☐ has

☐ has not--

participated in a previous contract or subcontract subject to the EQUAL OPPORTUNITY clause of this solicitation;

(b) It--

☐ has

☐ has not--

filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(FAR 52.222-22)

K1.01-6 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

THE FAR REPRESENTATION IN THE FOLLOWING PARAGRAPH SHALL BE COMPLETED BY EACH OFFEROR WHOSE OFFER IS \$50,000 OR MORE AND WHO HAS 50 OR MORE EMPLOYEES.

This representation--

☐ DOES APPLY.

☐ DOES NOT APPLY.

The offeror represents that--

(a) It--

☐ has developed and has on file

☐ has not developed and does not have on file--

at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It--

[] has not previously had contracts subject to the written programs requirement of the rules and regulations of the Secretary of Labor.

(FAR 52.222-25)

K1.01-11 SMALL BUSINESS PROGRAM REPRESENTATIONS (ALTS I/II) (OCT 2000/OCT 2000/OCT 2000)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 493110.

(2) The small business size standard is \$18.5 million.

(3) The small business size standard for a concern that submits an offer in its own name, other than on a construction or service contract, but that proposes to furnish a product that it did not itself manufacture, is 500 employees.

(b) REPRESENTATIONS.

(1) The offeror represents as part of its offer that it--

[] is,

[] is not

a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it--

[] is,

[] is not

a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it--

[] is,

[] is not

a women-owned small business concern.

(4) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, as part of its offer, that it--

[] is

[] is not

a veteran-owned small business concern.

(5) (Complete only if offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.) The offeror represents, as part of its offer, that it--

[] is

[] is not

a service-disabled veteran-owned small business concern.

(6) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It--

☐ is
☐ is not

a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It--

☐ is
☐ is not

a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in subdivision (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. **The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:**

_____	_____
_____	_____
_____	_____
_____	_____

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) (Complete if the offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.) The offeror shall check the category in which its ownership falls:

- ☐ Black American.
- ☐ Hispanic American.
- ☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- ☐ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- ☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- ☐ Individual/concern, other than one of the preceding.

(c) **DEFINITIONS.** As used in this provision--

(1) **Service-disabled veteran-owned small business concern** means a small business concern--

(i) **Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and**

(ii) **The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.**

(2) **Service-disabled veteran** means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service connected, as defined in 38 U.S.C. 101(16).

(3) **Small business concern** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

(4) **Veteran-owned small business concern** means a small business concern—

(i) **Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and**

(ii) The management and daily business operations of which are controlled by one or more veterans.

(5) **Women-owned small business concern** means a small business concern—

(i) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) **NOTICE.**

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall-

(i) Be punished by imposition of a fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(FAR 52.219-1/Alts I/II)

K1.06 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "**DUNS**" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at **1-800-333-0505**. The offeror should be prepared to provide the following information:

- (1) Company name;
- (2) Company address;
- (3) Company telephone number;
- (4) Line of business;
- (5) Chief executive officer/key manager;
- (6) Date the company was started;
- (7) Number of people employed by the company; and
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an email to Dun and Bradstreet at globalinfo@mail.dnb.com.

(FAR 52.204-6)

K5 USE OF ELECTRONIC DATA INTERCHANGE (DESC MAY 1994)

(a) DEFINITIONS.

(1) **Electronic Data Interchange (EDI)** means the computer-to-computer exchange of business documents between trading partners using a public standard format.

(2) **American National Standards Institute (ANSI)** means the agency that formulates the guidelines for the standards used in EDI transactions. X12 is the ANSI subcommittee responsible for the development and maintenance of guidelines for use in exchanging standard business transactions electronically.

(3) **Trading partner** means any business customer engaging in an EDI program.

(4) **Trading Partner Agreement (TPA)** means the legal document wherein the trading partners agree to the electronic exchange of documents.

(5) **Value Added Network (VAN)** means the electronic mailbox through which EDI partners exchange business transactions.

(b) The Defense Energy Support Center (DESC) may utilize EDI for certain documents in contracts awarded under this solicitation. DESC has implemented a system using the (ANSI) X12 standards, as applicable, for EDI. When EDI procedures are to be used, DESC and the Contractor will enter into a TPA.

(c) [] A check in this block indicates that the Contractor has already entered into a TPA with DESC.

(d) Upon submission of the following data, DESC will forward a TPA to the Contractor for execution:

(1) Company Name: _____

(2) Point of Contact for EDI: _____

(3) POC's Telephone Number: _____

(4) POC's Address: _____

(5) VAN Service Provider(s): _____

(6) Provide information for the following fields:

ISA07 Company Qualifier _____

ISA08 Company Value _____

GS03 Company Value _____

(7) Please identify:

Element Separator: _____

Subelement Separator: _____

Segment Terminator: _____

(e) By execution of the TPA, the Contractor agrees to be bound by the terms and conditions of the agreement governing any transactions with the Government through EDI, in addition to the terms and conditions of the contract. TPAs will be contract independent. Only one will be signed between the Contractor and DESC. As contracts are awarded, the TPA will be incorporated into the specific contracts upon the mutual agreement of the Contractor and DESC.

(f) When a TPA is executed--

- (1) The TPA shall identify, among other things, the VAN(s) through which electronic transmissions are made, the Transaction Sets available, security procedures, and guidelines for implementation.
- (2) The Contractor shall be responsible for providing its own computer hardware, computer software, and VAN connections necessary to transmit and receive data electronically under the framework of the TPA.
- (3) Transaction Sets will be unique to each contract and will be incorporated into contracts as agreed to by the parties.
- (4) Nothing in the TPA will invalidate any part of the contract between the Contractor and DESC.
- (5) All terms and conditions that would otherwise be applicable to a paper document shall apply to the electronic document.

(DESC 52.232-9F30)

K7 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUN 2000)

NOTE: This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts that are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) **CERTIFICATE OF CONCURRENT SUBMISSION OF DISCLOSURE STATEMENT.**

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form Number CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and address of cognizant ACO or Federal official where filed: _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) **CERTIFICATE OF PREVIOUSLY SUBMITTED DISCLOSURE STATEMENT.**

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and address of cognizant ACO or Federal official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) **CERTIFICATE OF MONETARY EXEMPTION.**

The offeror hereby certifies that the offeror, together with all Page 93 of 107

divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) **CERTIFICATE OF INTERIM EXEMPTION.**

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause in lieu of the COST ACCOUNTING STANDARDS clause.

☐ *The offeror hereby claims an exemption from the COST ACCOUNTING STANDARDS clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The*

offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the COST ACCOUNTING STANDARDS clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ YES

☐ NO

(FAR 52.230-1)

K15 RELEASE OF UNIT PRICES (DESC JUL 2002)

(a) The Defense Energy Support Center (DESC) has routinely released the unit prices of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. These unit prices are the bottom-line price per unit of product. Unit price may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors. This information has been released pursuant to the Freedom of Information Act in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offerors, and other summary formats. Updated contract prices are also publicly posted on the DESC website throughout the delivery period of some contracts. Offerors have not objected to DESC's routine release or disclosure of these unit prices.

(b) **DESC does not believe that release of unit prices after award causes any competitive harm. If the offeror disagrees, the offeror must provide a detailed explanation of how it will suffer competitive harm from the release of unit prices after award. The competitive harm explanation is required if the offeror either agrees to release award prices only, or does not agree with releasing any unit prices. This detailed explanation must be provided with the initial offer. DESC will use this information to determine if there is a sufficient basis to withhold the unit price after award. The offeror's indication of disagreement with release of unit prices and/or failure to provide a detailed explanation of competitive harm with the initial offer may result in release of unit prices after award. Failure to agree to the release of unit prices shall not be a factor considered in contract award.**

(c) Offerors shall indicate their agreement below to the release of unit prices after award. **NOTE:** The offeror's agreement or disagreement with release of unit prices must apply to all items and may not be split to apply differently to different line items.

☐ Offeror **AGREES** to the release of unit prices.

☐ Offeror **AGREES** to the release of unit prices, but only in the event of contract award. Detailed rationale as to why the release of unit prices of unsuccessful offers would cause competitive harm is attached.

☐ Offeror **DOES NOT AGREE** to the release of unit prices. Detailed rationale as to why the release of unit prices would cause competitive harm is attached.

(DESC 52.224-9F25)

K15.03 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

_____[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(FAR 52.203-2)

K33.01 AUTHORIZED NEGOTIATORS (DESC JAN 1998)

The first page of the offer must show names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate with the Government on the offeror's behalf in connection with this solicitation. The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

(DESC 52.215-9F28)

K41 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) **DEFINITION. Women-owned business concern**, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) **REPRESENTATION.** (Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, SMALL BUSINESS PROGRAM REPRESENTATIONS, of this solicitation.) The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(FAR 52.204-5)

K45 FACSIMILE INVOICING (COCO/GOCO) (DESC SEP 1988)

(a) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times.

(b) Offeror shall indicate whether or not s/he intends to submit invoices via FAX:

☐ YES

☐ NO

(c) See the SUBMISSION OF INVOICES BY FACSIMILE clause for FAX invoicing procedures.

(DESC 52.232-9F05)

K85 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) **DEFINITIONS.** As used in this provision--

(1) **Government of a terrorist country** includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) **Terrorist country** means a country determined by the Secretary of State, under Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) **Significant interest**, as used in this provision means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) **PROHIBITION ON AWARD.** In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) **DISCLOSURE.**

If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose such interest in an attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. The disclosure shall include--

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each Government.

(DFARS 252.209-7001)

K88 TAXPAYER IDENTIFICATION (OCT 1998)

(a) **DEFINITIONS.**

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) **TAXPAYER IDENTIFICATION NUMBER (TIN).**

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because--

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) **TYPE OF ORGANIZATION.**

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ International organization per 26 CFR 1.6049-4;

☐ Other _____.

(f) **COMMON PARENT.**

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name: _____

TIN: _____

(FAR 52.204-3)

K93 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the TRANSPORTATION OF SUPPLIES BY SEA clause of this solicitation.

(b) **REPRESENTATIONS.**

The offeror represents that it--

☐ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

☐ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the TRANSPORTATION OF SUPPLIES BY SEA clause. If the offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA.

(DFARS 252.247-7022)

K94 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER

RESPONSIBILITY MATTERS (APR 2001)

(a) (1) The offeror certifies, to the best of its knowledge and belief, that--

(i) The offeror and/or any of its Principals--

(A) ☐ are,

☐ are not

presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

[This paragraph (B) language is stayed indefinitely. Please use paragraph (D) below.]

(B) ☐ have,

☐ have not

within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

[This paragraph (C) language is stayed indefinitely. Please use paragraph (E) below.]

(C) ☐ are,

☐ are not

presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(D) ☐ have,

☐ have not

within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(E) ☐ are,

☐ are not

presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(D) of this provision.

[This subparagraph (a)(1)(ii) is stayed indefinitely.]

(ii) (A) The offeror, aside from the offenses enumerated in subdivisions (a)(1)(i)(A), (B), and (C) of this provision—

☐ has,

☐ has not

within the past three-years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws—

(a) Been convicted of a Federal or State felony (or has any Federal or State felony indictments currently pending against them); or
(b) Had a Federal court judgment in a civil case brought by the United States rendered against them; or
(c) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.

(B) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer; and

(iii) The offeror—

☐ has,
☐ has not

within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) **Principals**, for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES, AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's

responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(FAR 52.209-5)

K96 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.
(FAR 52.203-11)

SECTION L – INSTRUCTION, CONDITIONS, AND NOTICES TO OFFERORS

L1.02 PROPOSAL ACCEPTANCE PERIOD (DESC NOV 1991)

(a) **Acceptance period**, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of **180** calendar days.

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(e) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in (c) above or within any extension thereof that has been agreed to by the offeror.
(DESC 52.215-9FB1)

L2.01 INSTRUCTIONS TO OFFERORS (RFP) (DESC OCT 1981)

Offerors are expected to examine all sections of the solicitation and the Information to Offerors form. Failure to do so will be at offeror's risk. Each offeror shall furnish the information required by the solicitation. Offers and modifications thereto shall be signed and dated. The name and title of the person authorized to sign the offer is to be printed or typed on the offer. The offer shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. Erasures or other changes must be initialed by

the person signing the offer. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.

(DESC 52.215-9F45)

L2.05-8 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION (ALT I) (FEB 2000/OCT 1997)

(a) **DEFINITIONS.** As used in this provision--

(1) **Discussions** are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

(2) **In writing or written** means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) **Proposal modification** is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award. Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

(4) **Time**, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturday, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) **AMENDMENTS TO SOLICITATIONS.** If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) **SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS.**

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals, and modifications to proposals shall be submitted in paper media in sealed envelopes or packages—

(i) Addressed to the office specified in the solicitation; and

(ii) Showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The proposal must show--

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the prices set opposite each item;
- (iv) Names, titles, and telephone and facsimile numbers (and electronic address if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
- (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) **Submission, modification, revision, and withdrawal of proposals.**

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "**late**" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(a) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(b) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, or It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(c) It is the only proposal received. It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposal in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the FACSIMILE PROPOSALS provision. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, EVALUATION OF FOREIGN CURRENCY OFFERS, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) **OFFER EXPIRATION DATE.** Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet.

(e) **RESTRICTION ON DISCLOSURE AND USE OF DATA.** Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: THIS PROPOSAL
INCLUDES DATA THAT SHALL NOT BE DISCLOSED OUTSIDE THE GOVERNMENT AND SHALL NOT BE DUPLICATED, USED, OR DISCLOSED -- IN WHOLE OR IN PART -- FOR ANY PURPOSE OTHER THAN TO EVALUATE THIS PROPOSAL. IF, HOWEVER, A CONTRACT IS AWARDED TO THIS OFFEROR AS A RESULT OF -- OR IN CONNECTION WITH -- THE SUBMISSION OF THIS DATA, THE GOVERNMENT SHALL HAVE THE RIGHT TO DUPLICATE, USE, OR DISCLOSE THE DATA TO THE EXTENT PROVIDED IN THE RESULTING CONTRACT. THIS RESTRICTION DOES NOT LIMIT THE GOVERNMENT'S RIGHT TO USE INFORMATION CONTAINED IN THIS DATA IF IT IS OBTAINED FROM ANOTHER SOURCE WITHOUT RESTRICTION. THE DATA SUBJECT TO THIS RESTRICTION ARE CONTAINED IN SHEETS (INSERT NUMBERS OR OTHER IDENTIFICATION OF SHEETS); and

(2) Mark each sheet of data it wishes to restrict with the following legend: USE OR DISCLOSURE OF DATA CONTAINED ON THIS SHEET IS SUBJECT TO THE RESTRICTION ON THE TITLE PAGE OF THIS PROPOSAL.

(f) **CONTRACT AWARD.**

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more

contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(FAR 52.215-1/Alt I)

L2.11-1 FACSIMILE BIDS (DESC AUG 1999)

(a) **DEFINITION. Facsimile bids**, as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the **requested to do so by the Contracting Officer**, the apparently successful bidder agrees to promptly submit the complete, original, signed bid, or a hard copy thereof, to be received within 10 days of the opening date.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment: (703) 767-8506.

(2) The Defense Energy Support Center's receiving equipment is a Panafax UF-880 facsimile machine. The receiving speed coincides with the applicable sending machine. Each FAX is required to include the following information on a cover sheet or at the top of the first page:

TO: (Name and office code, i.e., Mary Smith, DESC-PH)

FROM: (Originator's name, complete company name and address)

Verification number: (Originator phone number and FAX number)

Description: (Solicitation number)

Number of pages:

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

- (1) Receipt of garbled or incomplete bid.
- (2) Availability or condition of the receiving facsimile equipment.
- (3) Incompatibility between the sending and receiving equipment.
- (4) Delay in transmission or receipt of bid.
- (5) Failure of the bidder to properly identify the bid.
- (6) Illegibility of bid.
- (7) Security of bid data.

(DESC 52.215-9FA5)

L2.11-2 FACSIMILE PROPOSALS (OCT 1997)

(a) **DEFINITION. Facsimile proposal**, as used in this provision, means a proposal, revision, or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is **703-767-8506**.

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;
(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(FAR 52.215-5)

L2.21 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any DOD FAR Supplement Regulation (48 CFR Chapter 2) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(FAR 52.252-5)

**L2.28 SOLICITATION PROVISIONS INCORPORATED BY
REFERENCE (FEB 1998)**

(a) This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotations or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provisions by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

FAR/DFARS: <http://farsite.hill.af.mil/>
FAR/DFARS: <http://www-far.npr.gov/>
DLAD: <http://www.procregs.hq.dla.mil/>

(FAR 52.252-1)

L3.03 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bid (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date bids are due.

(b) (1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made; the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and --

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or,

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper; other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements

preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the FACSIMILE BIDS provision. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(FAR 52.214-7)

L5 SERVICE OF PROTEST (AUG 1996)

(a) **Protests**, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from--

ATTN: **DFSC-CPA**
DEFENSE ENERGY SUPPORT CENTER
8725 JOHN J KINGMAN ROAD SUITE 4950
FORT BELVOIR VA 22060-6222

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with GAO.
(FAR 52.233-2)

L5.01-1 AGENCY PROTESTS (SEP 1999) - DLAD

Companies protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order No. 12979, with the Agency for a decision by the Activity's Chief of the Contracting Office. Protests filed with the Agency should clearly state that they are an "Agency Level Protest under Executive Order No. 12979." (NOTE: DLA procedures for Agency Level Protests filed under Executive Order No. 12979 allow for a higher level decision on the initial protest than would occur with a protest to the Contracting Officer; this process is not an appellate review of a Contracting Officer's decision on a protest previously filed with the Contracting Officer.) Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the Contracting Officer.

(DLAD 52.233-9000)

L7 SOCIOECONOMIC PROPOSAL (DESC DEC 2001)

(a) Offerors shall submit a plan that demonstrates their commitment to providing subcontracting opportunities to small businesses and Historically Black Colleges/Universities and Minority Institutions (HBCUs/MIs). All offerors regardless of business size are required to provide socioeconomic commitment. Small businesses will be credited for the dollar value/percentage of the work they perform as if the work were subcontracted to a small business concern. Work performed by a small business in-house shall be identified in the socioeconomic plan.

(b) As part of the plan, the offeror shall include--

(1) A description of the efforts the company will make to ensure that small businesses and/or HBCUs/MIs will have equal opportunity to compete for subcontracts under any resulting contract.

(2) A description of the offeror's current and planned proposed range for services, supplies, and any other support that will be provided by small businesses and/or HBCUs/MIs.

(3) The specific names of subcontractors to the extent they are known.

(4) A description of any future plans the company has for developing additional subcontracting opportunities for small businesses and/or HBCUs/MIs during the contract period.

(5) Identification of the portion of the offeror's proposal, as a percentage of dollars, that will be subcontracted to small businesses and/or HBCUs/MIs.

(6) The type of performance data the offeror would accumulate and provide to the Contracting Officer regarding their support of small businesses and/or HBCUs/MIs during the period of contract performance.

(7) The name and title of the individual principally responsible for ensuring company support to such firms.

(DESC 52.215-9F71)

L17 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained --

(a) From the ASSIST database via the Internet at <http://assist.daps.mil>; or

(b) By submitting a request to the --

DEPARTMENT OF DEFENSE SINGLE STOCK POINT (DODSSP)
BUILDING 4 SECTION D
700 ROBBINS AVENUE
PHILADELPHIA PA 19111-5094

TELEPHONE: (215) 697-2667/2179
FACSIMILE: (215) 697-1462.

(FAR 52.211-2)

L23 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (MAR 1998)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., the VETS-100 report required by FAR clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has submitted the most recent report required by 38 U.S.C. 4212(d).

(DFARS 252.209-7003)

L42 FACILITIES CAPITAL COST OF MONEY (OCT 1997)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause WAIVER OF FACILITIES CAPITAL COST OF MONEY. (FAR 52.215-16)

L82 WAGE DETERMINATION (DESC JAN 1986)

This procurement is subject to Wage Determination Numbers 1994-2134 dated 6/28/2002 and 1994-2133 dated 06/28/2002 as determined by the Administrator, Wage and Hour Public Contracts Division, U.S. Department of Labor. Register of Wage Determination and Fringe Benefits under the McNamara-O'Hara Service Contract Act is attached and made a part of this solicitation. (DESC 52.222-9F10)

L87.06 CONDITIONS FOR MULTIYEAR OFFERS (DESC APR 2001)

(a) **Offerors must submit a price for the total multiyear requirements. Offers for less than the multiyear requirements will not be considered for award, except for items specifically designated as one-year requirements.**

(b) An offered price on a multiyear line item shall apply to the entire period of the multiyear requirement.

(c) **Award will not be made for less than the multiyear requirements, except for those items designated as one-year requirements.**

(DESC 52.207-9FA5)

L116.01 DATA REQUIRED (STORAGE) (DESC SEP 1994)

(a) Each proposal shall be accompanied by a map (a city street map is satisfactory) showing the exact location of the facility, a schematic drawing showing the facility layout and its relation to other facilities in the area, a description of equipment to be provided, line systems, pump capacities, and other data.

(b) Offeror must verify that certified strapping charts are available for each tank offered and that such charts will be provided upon request.

(c) Offerors are requested to provide, in barrels, the tank bottom for each tank, the pipeline and manifold fill for the facilities offered, and the capacity of the facilities available for receiving ballast water. Offerors are required to provide the maximum safe fill capacity for each tank offered, including a summary of how the maximum safe fill capacity computation was calculated.

(d) If the proposal is based on providing a common system isolated in accordance with the SERVICES TO BE FURNISHED clause, including a single-product system that is not for exclusive use of DESC-owned product, in lieu of the preferred

dedicated system, offerors must submit a general description of such system including detailed handling procedures that shall be followed to ensure the quality of U.S. Government-owned product. The detailed procedures must include as a minimum (1) the types and grades of all other products moved through any part of the offered isolated system, including a list of the products' specifications, and (2) detailed procedures on how non-Government line fills are to be handled prior to receipt/shipment of Government product, i.e., flush and drain line, etc. (DESC 52.215-9F90)

L201.02 INSTRUCTIONS TO OFFERORS (COCO) (DESC MAY 1997)

Offeror shall submit an original and one copy of their proposals, divided into the following sections labeled **Offeror Submission Package** and **Past Performance**:

(a) **Offeror Submission Package.**

(1) Complete all required representations and certifications, and provide proposed prices in the SERVICES TO BE FURNISHED AND PRICES clause.

(2) If any exceptions are to be taken to the terms and conditions of the solicitation, indicate (on a separate sheet) the specific paragraph and submit as part of this Offeror Submission Package. Only exceptions detailed here will be considered exceptions to the requirements of the solicitation.

(b) **Past Performance.**

(1) The offeror shall list all contracts and subcontracts completed in the last three years and those in progress that are related to the proposed contract. These contracts may include efforts undertaken on behalf of private industry, quasi-government organizations, or Federal agencies, including those performed for non-DoD activities. The offeror should include the following information:

- (i) Name and address of contracting activity;
 - (ii) Contract number;
 - (iii) Contract type and dollar value;
 - (iv) Brief description of the work (if the offeror is a large business, include a description of any subcontracting);
 - (v) Contracting Officer, Contracting Officer's Representative; Administrative Contracting Officer, and Program Manager (all that are applicable) with telephone numbers; and
 - (vi) Significant problem(s) encountered and the corrective action(s) taken.
- (DESC 52.215-9F35)

L203 HANDCARRIED OFFERS AND EXPRESS DELIVERY SERVICE (DESC JAN 1998)

(a) Any handcarried offer must be received at the depository indicated on the Standard Form (SF) 33 or SF 1449 of this solicitation by the date and time specified for receipt of offers. Evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the solicitation wrapper or other documentary evidence of receipt maintained by the installation.

(b) Offers delivered by an express delivery service will be considered "handcarried." Therefore, bidders/offerors that respond to this solicitation using an express delivery service must ensure that the express delivery service "handcarries" the offer to the depository indicated on the SF 33 or SF 1449.

(c) The term **express delivery service** does not include Express Mail delivered by the United States Postal Service. Express Mail will be considered "mail" under the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS provision or the Late Offers paragraph of the INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS or INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITIONS provision.

(DESC 52.252-9F05)

L205 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code must be for that name and address. Enter **CAGE** before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will--

(1) Ask the Contractor to complete Section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(DFARS 252.204-7001)

SECTION M – EVALUATION FACTORS FOR AWARD

M2.13 EVALUATION OF OFFERS (MULTIYEAR COCO STORAGE) (DESC DEC 1996)

(a) All offers will be evaluated on price and past performance. These two factors are equal in importance. Award will be made to the offeror who represents the best value combination of price and past performance.

(b) **PRICE.** The low multiyear offer will be determined by computing the total cost to the Government for five years of service. This will be accomplished by adding—

(1) The monthly service charge offered in Line Item 1001 of the Schedule multiplied by 60;

(2) The estimated excess throughput charge for five years (Line Item 1002 excess throughput rate multiplied by 500,000 barrels*); and

(3) The estimated five year cost of any additional charges listed under Line Item 1001C.

(c) **PAST PERFORMANCE.**

(1) The Government will evaluate the offeror's past performance. In doing this, the Government may consider information in the offeror's proposal and information obtained from other sources, including past and present customers and their employees, subcontractors, and any others who may have useful information. Offerors lacking relevant past performance history shall receive a neutral evaluation for past performance.

(2) A record of acceptable past performance will not result in a favorable assessment of an otherwise unacceptable proposal.

(3) Proposals may be rated differently within each category, i.e., two proposals may receive an exceptional rating, but one may be more exceptional than the other.

*This five year estimated excess throughput quantity will be used for evaluation purposes only. (DESC 52.216-9F50)

M7 SOCIOECONOMIC EVALUATION (DESC DEC 2001)

The relative merits of the Socioeconomic Proposal will be evaluated based on the degree to which an offeror's proposal demonstrates the commitment to use, in performance of the offered requirements, small businesses and/or Historically Black Colleges/Universities or Minority Institutions (HBCUs/MIs).

NOTE: The offeror's proposals for socioeconomic support will be made a part of any resulting contract for use in determining how well the Contractor has adhered to its socioeconomic plan. This plan will be monitored by the cognizant Defense Contract Management Command's small business office as a means of assisting the Contracting Officer in determining how well the Contractor has in fact performed. This determination will then be used as a consideration prior to option exercise and future source selection decisions. Performance on prior contracts in subcontracting with and assisting small businesses and HBCUs/MIs will be part of past performance evaluation.

(DESC 52.215-9FB6)

M43.01 EVALUATION OF OPTIONS (DESC MAY 1999)

(a) Proposals will be evaluated for purposes of award by adding the total price for all option periods to the total price for the basic period. Evaluation of options will not obligate the Government to exercise the option or options.

(b) Any proposal that is materially unbalanced as to prices for basic option periods may be rejected as nonresponsive. An unbalanced offer is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(DESC 52.217-9F05)

M43.03 EVALUATION OF OPTIONS (COCO) (DESC MAY 1999)

(a) Offers will be evaluated for purposes of award by adding the total per barrel per year price for all option periods to the total per barrel per year price for the basic period. Evaluation of options will not obligate the Government to exercise the to option or options.

(b) Any offer that is materially unbalanced as to prices for basic and option periods may be rejected as nonresponsive. An unbalanced offer is one that is based on prices significantly less than cost for some work and prices that are significantly overstated for other work.

(DESC 52.217-9F15)

M55 CONVERSION FACTORS (DESC APR 1998)

(a) This provision applies to all products except lubricating oils.
(b) The offeror should use conversion factors that reflect its product characteristics and submit prices and transportation rates in the requested units. In the event prices or transportation rates are not submitted in the requested units, the following conversion factors based on an assumed density for the product will be used by DESC in the evaluation of the offer.

(1) **TABLE I.**

One Imperial Gallon	=	1.20095 U.S. Gallons at the same temperature
One Liter	=	0.264172 U.S. Gallons at the same temperature
One Cubic Meter (1,000 liters)	=	6.2898 Barrels at the same temperature
One U.S. Barrel	=	42 U.S. Gallons at the same temperature
One Kilometer	=	0.62137 Miles
One Mile	=	1.6093 Kilometers
One Nautical Mile	=	1.15 Statute Miles

(2) **TABLE II.**

PRODUCT	DENSITY TYPICAL		BARRELS PER METRIC TON	GALLONS PER METRIC TON	LITERS PER METRIC TON	BARRELS PER LONG TON	GALLONS PER LONG TON
	<u>Kg/m³</u>	<u>API</u>					
AUTOMOTIVE							
GASOLINE (ALL)	744.9	58.4	8.462	355.42	1342.46	8.598	361.12
AVIATION							

GASOLINE (ALL)	716.3	66.0	8.801	369.66	1396.06		375.59
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BURNER FUEL OILS

FUEL OIL NO. 1	812.8	42.5	7.753	325.61	1230.31	7.877	330.83
FUEL OIL NO. 2	846.9	35.5	7.440	312.49	1180.78	7.560	317.51
FUEL OIL NO. 4	914.2	23.2	6.891	289.44	1093.85	7.002	294.09
FUEL OIL							
NO. 5 LIGHT	954.2	16.7	6.602	277.27	1048.00	6.707	281.71
FUEL OIL NO.							
5 HEAVY	960.7	15.7	6.557	275.39	1040.91	6.662	279.81
FUEL OIL NO. 6	976.6	13.3	6.450	270.90	1023.96	6.554	275.25

DIESEL FUELS

DFA	810.5	43.0	7.775	326.54	1233.81	7.900	331.79
DF1	818.9	41.2	7.695	323.17	1122.15	7.818	328.36
DF2/GAS OIL	839.3	37.0	7.507	315.30	1191.47	7.628	320.36

INTERMEDIATE FUEL OILS

IFO 60	947.2	17.8	6.651	279.33	1055.74	6.757	283.81
IFO 180	965.3	15.0	6.526	274.09	1035.95	6.630	278.48
IFO 220	967.9	14.6	6.508	273.34	1033.16	6.612	277.72
IFO 380	973.9	13.7	6.468	271.65	1026.68	6.572	276.01

JET FUELS

JP4/JET B	764.6	53.5	8.243	346.22	1307.87	8.376	351.78
JP5	819.9	41.0	7.686	322.80	1219.66	7.809	327.98

JP8/JET A1	805.9	44.0	7.820	328.42	1240.85	7.945	333.69
JET A	814.2	42.2	7.739	325.04	1228.20	7.863	330.26

KEROSINES (ALL)	815.2	42.0	7.730	324.68	1226.69	7.854	329.88
MARINE GAS OIL	839.3	37.0	7.507	315.30	1191.47	7.628	320.36
NAPHTHA	731.1	62.0	8.623	362.16	1367.80	8.761	367.97
NAVAL DISTILLATE							
FUEL (F76)							

AND DFW (F75)	844.3	36.0	7.463	313.43	1184.41	7.582	318.46
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(3) **TABLE III.**

ASSUMED DENSITY

<u>PRODUCT</u>	<u>20 deg C/20 deg C</u>		
	<u>g/mL</u>	<u>lb/gal</u>	<u>Kg/gal</u>
FSII DIEGME	1.025	8.561	3.884

(DESC 52.215-9FA1)

M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DESC APR 1997)

(a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.
(b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either--

- (1) The exception/deviation is material enough to warrant rejection of the offer in part or in full; or
- (2) The exception/deviation is acceptable.

(c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates, by attachment to the offer, the extent to which any product offered differs from the required specification(s).

(d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from those requirements.

(e) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.

(DESC 52.209-9F45)

THE FOLLOWING ARE THE MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING. SUBJECT TO THE QUALITY REPRESENTATIVE (QR) APPROVAL, ADDITIONAL SAMPLING AND TESTING SHALL BE INCORPORATED INTO THE CONTRACTOR'S QUALITY CONTROL PLAN BASED ON THE LOCAL RECEIVING, STORING, AND ISSUING PROCESS AT THE FACILITY. THE GOVERNMENT'S QR MAY REQUEST ADDITIONAL TESTING BASED ON CIRCUMSTANCES AFFECTING A PARTICULAR SAMPLE.

TESTING REQUIREMENTS:

MIL-DTL-83133 (*Latest Version*),
GRADE **JP-8**

LOCATION OF STOCK	TESTS
<p>1. Vessel: Prior to Discharge - or - After Loading All level sample from each cargo tank on vessel prior to discharge or after loading. (See Notes 1, 2, & 3, below)</p>	<p>a) Workmanship b) Color, Visual c) API Gravity or Density</p>
<p>2. Vessel: Prior to Discharge - or - After Loading Composite Samples (See Notes 1, 2, & 3, below)</p>	<p>a) Workmanship b) Color, Visual c) API Gravity or Density d) Flash Point e) Particulate Matter f) Distillation g) Copper Strip Corrosion h) Freezing Point i) Existent Gum j) Water Reaction k) Fuel Systems Icing Inhibitor l) Filtration Time m) Water Separation Index Modified (if fuel does not contain conductivity additive.) n) Conductivity</p>

NOTE 1: Vessel (Tanker / Barge) Composite Samples **prior to Discharge:**

(1) For Multi-Product Cargoes: Discharge of product may commence after conformance with tests **a) through d)**, above. The balance of tests will be completed in a timely manner prior to or during the discharge.

(2) For Single-Product Cargoes: Discharge of product may commence after conformance with tests **a) through d)**, above. The remaining sample volume shall be retained(*), and the balance of tests will be performed on the retained sample if receiving storage tanks are found to be off-specification.

NOTE 2: Tanker/Barge Composite Samples after loading:

The vessel may sail after completion of tests **a) through d)**, above. The balance of tests will be completed **prior to** vessel arrival at destination.

NOTE 3:

A composite line sample (10 liters) will be taken - proportionately - over the entire loading. The composite sample shall be retained (*).

(*) *Retain samples shall be held in accordance with Clause E28, Contractor Inspection Responsibilities.*

LOCATION OF STOCK	TESTS
<p>3. Line: Shipments and Receipts:</p> <p>a. Immediately after the start of a shipment or receipt:</p> <p>b. A one-half quart or liter will be taken during shipment or receipt, beginning one half-hour after the start, and then hourly thereafter. Samples to be composited after completion of the discharge.</p> <p>c. A one-gallon line sample will be taken one hour after start, midpoint, and one hour prior to completion of the discharge.</p> <p>4. For split cargo discharges - where the other other product is JP-4, AVGAS, or MOGAS: a dock header sample will be taken during the JP-8 discharge one half-hour after the start of discharge and hourly thereafter.</p> <p>5. Storage Tanks, after receipt: An upper/middle/lower shore tank or an All-level sample shall be taken from each storage tank.</p> <p>6. Tank Trucks/Tank Cars: Composite sample of loaded tank trucks/tank cars.</p> <p>7. Interface Mixtures from pipeline for Injection for blending purposes.</p>	<p>a) Workmanship b) Color, Visual c) API Gravity or Density d) Flash Point</p> <p>a) Workmanship b) Color, Visual then Retained as a Composite.</p> <p>g) Particulate Contamination on each sample.</p> <p>d) Flash Point on each sample</p> <p>Same as Paragraph 2 above, plus: l) Thermal Stability - taken after tanker receipts or after receipts from multi-product pipeline shipments carrying fertilizer as one of the products.</p> <p>Same as Paragraph 3.a. above.</p> <p>Same as Paragraph 2 above.</p>

LOCATION OF STOCK	TESTS
9. Dormant Stocks (Tanks that do not receive fuel from an outside source in the previous six months). Composite Upper/Middle/Lower or an All-Level Sample from each storage tank.	a) Workmanship b) Color, Visual c) API Gravity or Density d) Flash Point e) Particulate Matter f) Distillation g) Copper Strip Corrosion h) Freezing Point i) Existent Gum j) Water Reaction k) Fuel Systems Icing Inhibitor l) Thermal Stability m) Color, Saybolt n) Acid Number
10. Individual Tests as directed by the cognizant Quality Office.	Any Test identified in Paragraph 9, plus : o) Aromatics p) Sulfur, Total q) Mercaptan Sulfur / Doctor Test r) Hydrogen Content s) Smoke Point t) Heating Value: Net Heat of Combustion u) Viscosity at -20°C v) Filtration Time w) Calculated Cetane Index x) Microseparometer Rating y) Sulfides in Water (Clause E34)

ALL TEST METHODS TO BE AS SPECIFIED IN SPECIFICATION MIL-DTL-83133 (LATEST REVISION), GRADE JP-8, EXCEPT FOR SULFIDES IN WATER, WHICH SHALL BE PERFORMED IN ACCORDANCE WITH CLAUSE E34 (*TESTS FOR SULFIDES IN WATER*).

S. Santiago, DESC-BQ, May 2000
G. Rowinski, DESC-BQC, September 2001


WAGE DETERMINATION NO: 94-2133 REV (22) AREA: GA,ATLANTA

WAGE DETERMINATION NO: 94-2133 REV (22) AREA: GA,ATLANTA

REGISTER OF WAGE DETERMINATIONS UNDER | U.S. DEPARTMENT OF LABOR

FOR OFFICIAL USE ONLY BY FEDERAL AGENCIES PARTICIPATING IN MOU WITH DOL

WASHINGTON D.C. 20210

 William W.Gross
Director

 Division of
Wage Determinations

Wage Determination No.: 1994-2133

Revision No.: 22

Date Of Last Revision: 06/28/2002

 State: **Georgia**

 Area: **Georgia** Counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, De Kalb, Douglas, Fannin, Fayette, Floyd, For Franklin, Fulton, Gilmer, Gordon, Greene, Gwinnett, Habersham, Hall, Haralson, Henry, Jackson, Lumpkin, Madison, Morgan, Murray, Newton, Oconee, Oglethorpe, Paulding, Pic Polk, Rabun, Rockdale, Spalding, Stephens, Towns, Union, Walton, White, Whitfield

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION TITLE

MINIMUM WAGE RATE

Administrative Support and Clerical Occupations

Accounting Clerk I	10.53
Accounting Clerk II	12.16
Accounting Clerk III	13.30
Accounting Clerk IV	15.85
Court Reporter	15.21
Dispatcher, Motor Vehicle	15.17
Document Preparation Clerk	11.40
Duplicating Machine Operator	11.40
Film/Tape Librarian	10.55
General Clerk I	8.11
General Clerk II	9.79
General Clerk III	13.93
General Clerk IV	14.61
Housing Referral Assistant	17.57
Key Entry Operator I	11.20
Key Entry Operator II	12.71
Messenger (Courier)	9.33
Order Clerk I	10.32
Order Clerk II	11.74
Personnel Assistant (Employment) I	12.14
Personnel Assistant (Employment) II	13.69
Personnel Assistant (Employment) III	16.60
Personnel Assistant (Employment) IV	18.79
Production Control Clerk	15.07
Rental Clerk	11.85
Scheduler, Maintenance	13.04
Secretary I	12.76
Secretary II	15.21
Secretary III	17.57
Secretary IV	20.25
Secretary V	24.90

Service Order Dispatcher	12.58
Stenographer I	13.60
Stenographer II	15.85
Supply Technician	18.04
Survey Worker (Interviewer)	13.83
Switchboard Operator-Receptionist	10.48
Test Examiner	15.21
Test Proctor	15.21
Travel Clerk I	10.18
Travel Clerk II	11.10
Travel Clerk III	11.96
Word Processor I	12.47
Word Processor II	14.41
Word Processor III	16.11
Automatic Data Processing Occupations	
Computer Data Librarian	11.14
Computer Operator I	12.99
Computer Operator II	14.48
Computer Operator III	18.25
Computer Operator IV	20.15
Computer Operator V	24.77
Computer Programmer I (1)	19.46
Computer Programmer II (1)	20.01
Computer Programmer III (1)	23.98
Computer Programmer IV (1)	27.62
Computer Systems Analyst I (1)	25.42
Computer Systems Analyst II (1)	27.62
Computer Systems Analyst III (1)	27.62
Peripheral Equipment Operator	12.67
Automotive Service Occupations	
Automotive Body Repairer, Fiberglass	17.92
Automotive Glass Installer	15.95
Automotive Worker	15.95
Electrician, Automotive	17.02
Mobile Equipment Servicer	13.80
Motor Equipment Metal Mechanic	17.92
Motor Equipment Metal Worker	15.95
Motor Vehicle Mechanic	17.92
Motor Vehicle Mechanic Helper	13.87
Motor Vehicle Upholstery Worker	15.05
Motor Vehicle Wrecker	15.95
Painter, Automotive	17.02
Radiator Repair Specialist	15.95
Tire Repairer	13.80
Transmission Repair Specialist	17.92
Food Preparation and Service Occupations	
Baker	11.09
Cook I	9.21
Cook II	10.46
Dishwasher	7.54
Food Service Worker	7.45
Meat Cutter	11.46
Waiter/Waitress	7.22
Furniture Maintenance and Repair Occupations	
Electrostatic Spray Painter	16.64
Furniture Handler	12.05
Furniture Refinisher	15.46
Furniture Refinisher Helper	11.95
Furniture Repairer, Minor	14.06
Upholsterer	15.46

General Services and Support Occupations

Cleaner, Vehicles	7.57
Elevator Operator	8.13
Gardener	10.59
House Keeping Aid I	7.49
House Keeping Aid II	8.17
Janitor	8.13
Laborer, Grounds Maintenance	8.60
Maid or Houseman	7.63
Pest Controller	12.43
Refuse Collector	8.13
Tractor Operator	10.22
Window Cleaner	10.23

Health Occupations

Dental Assistant	12.25
Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver	12.12
Licensed Practical Nurse I	10.95
Licensed Practical Nurse II	12.29
Licensed Practical Nurse III	13.74
Medical Assistant	11.15
Medical Laboratory Technician	11.56
Medical Record Clerk	12.46
Medical Record Technician	13.66
Nursing Assistant I	8.77
Nursing Assistant II	9.86
Nursing Assistant III	10.77
Nursing Assistant IV	12.08
Pharmacy Technician	12.29
Phlebotomist	11.43
Registered Nurse I	17.28
Registered Nurse II	21.15
Registered Nurse II, Specialist	21.15
Registered Nurse III	25.56
Registered Nurse III, Anesthetist	25.56
Registered Nurse IV	30.64

Information and Arts Occupations

Audiovisual Librarian	18.32
Exhibits Specialist I	15.01
Exhibits Specialist II	18.59
Exhibits Specialist III	22.40
Illustrator I	18.99
Illustrator II	23.52
Illustrator III	28.34
Librarian	23.60
Library Technician	14.50
Photographer I	14.44
Photographer II	15.01
Photographer III	18.59
Photographer IV	22.40
Photographer V	23.86

Laundry, Dry Cleaning, Pressing and Related Occupations

Assembler	8.55
Counter Attendant	8.55
Dry Cleaner	9.06
Finisher, Flatwork, Machine	8.55
Presser, Hand	8.55
Presser, Machine, Drycleaning	8.55
Presser, Machine, Shirts	8.55
Presser, Machine, Wearing Apparel, Laundry	8.55
Sewing Machine Operator	9.79

Tailor	11.12
Washer, Machine	9.68
Machine Tool Operation and Repair Occupations	
Machine-Tool Operator (Toolroom)	15.46
Tool and Die Maker	22.45
Material Handling and Packing Occupations	
Forklift Operator	12.24
Fuel Distribution System Operator	14.88
Material Coordinator	14.58
Material Expediter	14.58
Material Handling Laborer	9.92
Order Filler	11.87
Production Line Worker (Food Processing)	11.95
Shipping Packer	11.78
Shipping/Receiving Clerk	12.00
Stock Clerk (Shelf Stocker; Store Worker II)	12.82
Store Worker I	10.71
Tools and Parts Attendant	12.24
Warehouse Specialist	13.07
Mechanics and Maintenance and Repair Occupations	
Aircraft Mechanic	20.66
Aircraft Mechanic Helper	15.11
Aircraft Quality Control Inspector	21.75
Aircraft Servicer	17.34
Aircraft Worker	18.45
Appliance Mechanic	17.53
Bicycle Repairer	12.83
Cable Splicer	18.37
Carpenter, Maintenance	15.46
Carpet Layer	14.74
Electrician, Maintenance	19.72
Electronics Technician, Maintenance I	17.35
Electronics Technician, Maintenance II	23.51
Electronics Technician, Maintenance III	25.98
Fabric Worker	13.70
Fire Alarm System Mechanic	17.12
Fire Extinguisher Repairer	12.96
Fuel Distribution System Mechanic	17.56
General Maintenance Worker	14.02
Heating, Refrigeration and Air Conditioning Mechanic	17.53
Heavy Equipment Mechanic	16.33
Heavy Equipment Operator	15.62
Instrument Mechanic	16.33
Laborer	9.92
Locksmith	15.46
Machinery Maintenance Mechanic	16.04
Machinist, Maintenance	18.32
Maintenance Trades Helper	11.95
Millwright	18.40
Office Appliance Repairer	16.20
Painter, Aircraft	17.57
Painter, Maintenance	15.66
Pipefitter, Maintenance	18.68
Plumber, Maintenance	17.78
Pneudraulic Systems Mechanic	17.12
Rigger	16.33
Scale Mechanic	15.02
Sheet-Metal Worker, Maintenance	18.95
Small Engine Mechanic	14.58
Telecommunication Mechanic I	16.33

Telecommunication Mechanic II	18.03
Telephone Lineman	17.12
Welder, Combination, Maintenance	16.33
Well Driller	16.33
Woodcraft Worker	16.33
Woodworker	13.76
Miscellaneous Occupations	
Animal Caretaker	9.12
Carnival Equipment Operator	9.43
Carnival Equipment Repairer	10.96
Carnival Worker	7.07
Cashier	7.85
Desk Clerk	8.84
Embalmer	16.70
Lifeguard	8.44
Mortician	16.70
Park Attendant (Aide)	9.53
Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	8.44
Recreation Specialist	9.94
Recycling Worker	10.80
Sales Clerk	8.01
School Crossing Guard (Crosswalk Attendant)	8.13
Sport Official	7.34
Survey Party Chief (Chief of Party)	12.98
Surveying Aide	7.73
Surveying Technician (Instr. Person/Surveyor Asst./Instr.)	10.73
Swimming Pool Operator	12.35
Vending Machine Attendant	10.22
Vending Machine Repairer	7.52
Vending Machine Repairer Helper	9.36
Personal Needs Occupations	
Child Care Attendant	7.12
Child Care Center Clerk	11.81
Chore Aid	17.96
Homemaker	17.01
Plant and System Operation Occupations	
Boiler Tender	17.96
Sewage Plant Operator	17.01
Stationary Engineer	17.96
Ventilation Equipment Tender	11.95
Water Treatment Plant Operator	15.46
Protective Service Occupations	
Alarm Monitor	11.86
Corrections Officer	12.92
Court Security Officer	15.24
Detention Officer	15.24
Firefighter	16.29
Guard I	8.38
Guard II	13.22
Police Officer	16.60
Stevedoring/Longshoremen Occupations	
Blocker and Bracer	15.58
Hatch Tender	15.58
Line Handler	15.58
Stevedore I	14.63
Stevedore II	16.71
Technical Occupations	
Air Traffic Control Specialist, Center (2)	27.58
Air Traffic Control Specialist, Station (2)	18.79
Air Traffic Control Specialist, Terminal (2)	20.69

Archeological Technician I	16.97
Archeological Technician II	18.99
Archeological Technician III	23.52
Cartographic Technician	22.10
Civil Engineering Technician	18.59
Computer Based Training (CBT) Specialist/ Instructor	26.28
Drafter I	14.41
Drafter II	18.27
Drafter III	18.99
Drafter IV	23.52
Engineering Technician I	15.28
Engineering Technician II	19.31
Engineering Technician III	20.68
Engineering Technician IV	24.19
Engineering Technician V	28.22
Engineering Technician VI	30.59
Environmental Technician	20.68
Flight Simulator/Instructor (Pilot)	27.28
Graphic Artist	22.10
Instructor	20.88
Laboratory Technician	15.74
Mathematical Technician	18.80
Paralegal/Legal Assistant I	16.69
Paralegal/Legal Assistant II	20.25
Paralegal/Legal Assistant III	24.71
Paralegal/Legal Assistant IV	27.67
Photooptics Technician	18.80
Technical Writer	25.50
Unexploded (UXO) Safety Escort	18.12
Unexploded (UXO) Sweep Personnel	18.12
Unexploded Ordnance (UXO) Technician I	18.12
Unexploded Ordnance (UXO) Technician II	21.92
Unexploded Ordnance (UXO) Technician III	26.27
Weather Observer, Combined Upper Air and Surface Programs (3)	20.09
Weather Observer, Senior (3)	26.41
Weather Observer, Upper Air (3)	20.09
Transportation/ Mobile Equipment Operation Occupations	
Bus Driver	12.20
Parking and Lot Attendant	6.74
Shuttle Bus Driver	10.54
Taxi Driver	9.23
Truckdriver, Heavy Truck	15.34
Truckdriver, Light Truck	11.90
Truckdriver, Medium Truck	13.32
Truckdriver, Tractor-Trailer	15.34

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$2.15 an hour or \$86.00 a week or \$372.67 a month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or success 3 weeks after 8 years. Length of service includes the whole span of continuous serv with the present contractor or successor, wherever employed, and with the predecesso contractors in the performance of similar work at the same Federal facility. (Reg. 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther Ki Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Co Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitu any of the named holidays another day off with pay in accordance with a plan communi to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. rate of basic pay plus a night pay differential amounting to 10 percent of the rate basic pay.
- 3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employee (40 hours week) and Sunday is part of your regularly scheduled workweek, you are paid at your basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employment possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arm ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differentials.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either the terms of the Government contract, by the employer, by the state or local law, or the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) uniforms is an expense that may not be borne by an employee where such cost reduces hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost) reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (\$0.67 cents per day). However, in those instances where the uniforms furnished are "wash and wear" materials, may be routinely washed and dried with other personal gear and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

** NOTES APPLYING TO THIS WAGE DETERMINATION **

Source of Occupational Title and Descriptions:

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form

(SF 1444) }

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work on such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See 4.6 (C) (vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation and computes a proposed rate).
- 2) After contract award, the contractor prepares a written report listing in order of classification title), a Federal grade equivalency (FGE) for each proposed classification), job description), and rationale for proposed wage rate), including information regarding the agreement or disagreement of the authorized representative employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of action, together with the agency's recommendations and pertinent information including position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b) Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper. When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties required are not performed by a classification already listed in the wage determination. Remember it is not the job title, but the required tasks that determine whether a class is in an established wage determination. Conformances may not be used to artificially combine, or subdivide classifications listed in the wage determination.

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WAGE DETERMINATION NO: 94-2134 REV (17) AREA: GA,ATLANTA

WAGE DETERMINATION NO: 94-2134 REV (17) AREA: GA,ATLANTA

REGISTER OF WAGE DETERMINATIONS UNDER | U.S. DEPARTMENT OF LABOR

FOR OFFICIAL USE ONLY BY FEDERAL AGENCIES PARTICIPATING IN MOU WITH DOL

WASHINGTON D.C. 20210

 William W.Gross
Director

 Division of
Wage Determinations

Wage Determination No.: 1994-2134

Revision No.: 17

Date Of Last Revision: 06/28/2002

 State: **Georgia**

 Area: **Georgia** Counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, De Kalb, Douglas, Fannin, Fayette, Floyd, For Franklin, Fulton, Gilmer, Gordon, Greene, Gwinnett, Habersham, Hall, Haralson, Henry, Jackson, Lumpkin, Madison, Morgan, Murray, Newton, Oconee, Oglethorpe, Paulding, Pic Polk, Rabun, Rockdale, Spalding, Stephens, Towns, Union, Walton, White, Whitfield

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION TITLE

MINIMUM WAGE RATE

Administrative Support and Clerical Occupations

Accounting Clerk I	10.53
Accounting Clerk II	12.16
Accounting Clerk III	13.30
Accounting Clerk IV	15.85
Court Reporter	15.21
Dispatcher, Motor Vehicle	15.17
Document Preparation Clerk	11.40
Duplicating Machine Operator	11.40
Film/Tape Librarian	10.55
General Clerk I	8.11
General Clerk II	9.79
General Clerk III	13.93
General Clerk IV	14.61
Housing Referral Assistant	17.57
Key Entry Operator I	11.20
Key Entry Operator II	12.71
Messenger (Courier)	9.33
Order Clerk I	10.32
Order Clerk II	11.74
Personnel Assistant (Employment) I	12.14
Personnel Assistant (Employment) II	13.69
Personnel Assistant (Employment) III	16.60
Personnel Assistant (Employment) IV	18.79
Production Control Clerk	15.07
Rental Clerk	11.85
Scheduler, Maintenance	13.04
Secretary I	12.76
Secretary II	15.21
Secretary III	17.57
Secretary IV	20.25
Secretary V	24.90

Service Order Dispatcher	12.58
Stenographer I	13.60
Stenographer II	15.85
Supply Technician	18.04
Survey Worker (Interviewer)	13.83
Switchboard Operator-Receptionist	10.48
Test Examiner	15.21
Test Proctor	15.21
Travel Clerk I	10.18
Travel Clerk II	11.10
Travel Clerk III	11.96
Word Processor I	12.47
Word Processor II	14.41
Word Processor III	16.11
Automatic Data Processing Occupations	
Computer Data Librarian	11.14
Computer Operator I	12.99
Computer Operator II	14.48
Computer Operator III	18.25
Computer Operator IV	20.15
Computer Operator V	24.77
Computer Programmer I (1)	19.46
Computer Programmer II (1)	20.01
Computer Programmer III (1)	23.98
Computer Programmer IV (1)	27.62
Computer Systems Analyst I (1)	25.42
Computer Systems Analyst II (1)	27.62
Computer Systems Analyst III (1)	27.62
Peripheral Equipment Operator	12.67
Automotive Service Occupations	
Automotive Body Repairer, Fiberglass	17.92
Automotive Glass Installer	15.95
Automotive Worker	15.95
Electrician, Automotive	17.02
Mobile Equipment Servicer	13.80
Motor Equipment Metal Mechanic	17.92
Motor Equipment Metal Worker	15.95
Motor Vehicle Mechanic	17.92
Motor Vehicle Mechanic Helper	13.87
Motor Vehicle Upholstery Worker	15.05
Motor Vehicle Wrecker	15.95
Painter, Automotive	17.02
Radiator Repair Specialist	15.95
Tire Repairer	13.80
Transmission Repair Specialist	17.92
Food Preparation and Service Occupations	
Baker	11.09
Cook I	9.21
Cook II	10.46
Dishwasher	7.54
Food Service Worker	7.45
Meat Cutter	11.46
Waiter/Waitress	7.22
Furniture Maintenance and Repair Occupations	
Electrostatic Spray Painter	16.64
Furniture Handler	12.05
Furniture Refinisher	15.46
Furniture Refinisher Helper	11.95
Furniture Repairer, Minor	14.06
Upholsterer	15.46

General Services and Support Occupations

Cleaner, Vehicles	7.57
Elevator Operator	8.13
Gardener	10.59
House Keeping Aid I	7.49
House Keeping Aid II	8.17
Janitor	8.13
Laborer, Grounds Maintenance	8.60
Maid or Houseman	7.63
Pest Controller	12.43
Refuse Collector	8.13
Tractor Operator	10.22
Window Cleaner	10.23

Health Occupations

Dental Assistant	12.25
Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver	12.12
Licensed Practical Nurse I	10.95
Licensed Practical Nurse II	12.29
Licensed Practical Nurse III	13.74
Medical Assistant	11.15
Medical Laboratory Technician	11.56
Medical Record Clerk	12.46
Medical Record Technician	13.66
Nursing Assistant I	8.77
Nursing Assistant II	9.86
Nursing Assistant III	10.77
Nursing Assistant IV	12.08
Pharmacy Technician	12.29
Phlebotomist	11.43
Registered Nurse I	17.28
Registered Nurse II	21.15
Registered Nurse II, Specialist	21.15
Registered Nurse III	25.56
Registered Nurse III, Anesthetist	25.56
Registered Nurse IV	30.64

Information and Arts Occupations

Audiovisual Librarian	18.32
Exhibits Specialist I	15.01
Exhibits Specialist II	18.59
Exhibits Specialist III	22.40
Illustrator I	18.99
Illustrator II	23.52
Illustrator III	28.34
Librarian	23.60
Library Technician	14.50
Photographer I	14.44
Photographer II	15.01
Photographer III	18.59
Photographer IV	22.40
Photographer V	23.86

Laundry, Dry Cleaning, Pressing and Related Occupations

Assembler	8.55
Counter Attendant	8.55
Dry Cleaner	9.06
Finisher, Flatwork, Machine	8.55
Presser, Hand	8.55
Presser, Machine, Drycleaning	8.55
Presser, Machine, Shirts	8.55
Presser, Machine, Wearing Apparel, Laundry	8.55
Sewing Machine Operator	9.79

Tailor	11.12
Washer, Machine	9.68
Machine Tool Operation and Repair Occupations	
Machine-Tool Operator (Toolroom)	15.46
Tool and Die Maker	22.45
Material Handling and Packing Occupations	
Forklift Operator	12.24
Fuel Distribution System Operator	14.88
Material Coordinator	14.58
Material Expediter	14.58
Material Handling Laborer	9.92
Order Filler	11.87
Production Line Worker (Food Processing)	11.95
Shipping Packer	11.78
Shipping/Receiving Clerk	12.00
Stock Clerk (Shelf Stocker; Store Worker II)	12.82
Store Worker I	10.71
Tools and Parts Attendant	12.24
Warehouse Specialist	13.07
Mechanics and Maintenance and Repair Occupations	
Aircraft Mechanic	20.66
Aircraft Mechanic Helper	15.11
Aircraft Quality Control Inspector	21.75
Aircraft Servicer	17.34
Aircraft Worker	18.45
Appliance Mechanic	17.53
Bicycle Repairer	12.83
Cable Splicer	18.37
Carpenter, Maintenance	15.46
Carpet Layer	14.74
Electrician, Maintenance	19.72
Electronics Technician, Maintenance I	17.35
Electronics Technician, Maintenance II	23.51
Electronics Technician, Maintenance III	25.98
Fabric Worker	13.70
Fire Alarm System Mechanic	17.12
Fire Extinguisher Repairer	12.96
Fuel Distribution System Mechanic	17.56
General Maintenance Worker	14.02
Heating, Refrigeration and Air Conditioning Mechanic	17.53
Heavy Equipment Mechanic	16.33
Heavy Equipment Operator	15.62
Instrument Mechanic	16.33
Laborer	9.92
Locksmith	15.46
Machinery Maintenance Mechanic	16.04
Machinist, Maintenance	18.32
Maintenance Trades Helper	11.95
Millwright	18.40
Office Appliance Repairer	16.20
Painter, Aircraft	17.57
Painter, Maintenance	15.66
Pipefitter, Maintenance	18.68
Plumber, Maintenance	17.78
Pneudraulic Systems Mechanic	17.12
Rigger	16.33
Scale Mechanic	15.02
Sheet-Metal Worker, Maintenance	18.95
Small Engine Mechanic	14.58
Telecommunication Mechanic I	16.33

Telecommunication Mechanic II	18.03
Telephone Lineman	17.12
Welder, Combination, Maintenance	16.33
Well Driller	16.33
Woodcraft Worker	16.33
Woodworker	13.76
Miscellaneous Occupations	
Animal Caretaker	9.12
Carnival Equipment Operator	9.43
Carnival Equipment Repairer	10.96
Carnival Worker	7.07
Cashier	7.85
Desk Clerk	8.84
Embalmer	16.70
Lifeguard	8.44
Mortician	16.70
Park Attendant (Aide)	9.53
Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	8.44
Recreation Specialist	9.94
Recycling Worker	10.80
Sales Clerk	8.01
School Crossing Guard (Crosswalk Attendant)	8.13
Sport Official	7.34
Survey Party Chief (Chief of Party)	12.98
Surveying Aide	7.73
Surveying Technician (Instr. Person/Surveyor Asst./Instr.)	10.73
Swimming Pool Operator	12.35
Vending Machine Attendant	10.22
Vending Machine Repairer	7.52
Vending Machine Repairer Helper	9.36
Personal Needs Occupations	
Child Care Attendant	7.12
Child Care Center Clerk	11.81
Chore Aid	17.96
Homemaker	17.01
Plant and System Operation Occupations	
Boiler Tender	17.96
Sewage Plant Operator	17.01
Stationary Engineer	17.96
Ventilation Equipment Tender	11.95
Water Treatment Plant Operator	15.46
Protective Service Occupations	
Alarm Monitor	11.86
Corrections Officer	12.92
Court Security Officer	15.24
Detention Officer	15.24
Firefighter	16.29
Guard I	8.38
Guard II	13.22
Police Officer	16.60
Stevedoring/Longshoremen Occupations	
Blocker and Bracer	15.58
Hatch Tender	15.58
Line Handler	15.58
Stevedore I	14.63
Stevedore II	16.71
Technical Occupations	
Air Traffic Control Specialist, Center (2)	27.58
Air Traffic Control Specialist, Station (2)	18.79
Air Traffic Control Specialist, Terminal (2)	20.69

Archeological Technician I	16.97
Archeological Technician II	18.99
Archeological Technician III	23.52
Cartographic Technician	22.10
Civil Engineering Technician	18.59
Computer Based Training (CBT) Specialist/ Instructor	26.28
Drafter I	14.41
Drafter II	18.27
Drafter III	18.99
Drafter IV	23.52
Engineering Technician I	15.28
Engineering Technician II	19.31
Engineering Technician III	20.68
Engineering Technician IV	24.19
Engineering Technician V	28.22
Engineering Technician VI	30.59
Environmental Technician	20.68
Flight Simulator/Instructor (Pilot)	27.28
Graphic Artist	22.10
Instructor	20.88
Laboratory Technician	15.74
Mathematical Technician	18.80
Paralegal/Legal Assistant I	16.69
Paralegal/Legal Assistant II	20.25
Paralegal/Legal Assistant III	24.71
Paralegal/Legal Assistant IV	27.67
Photooptics Technician	18.80
Technical Writer	25.50
Unexploded (UXO) Safety Escort	18.12
Unexploded (UXO) Sweep Personnel	18.12
Unexploded Ordnance (UXO) Technician I	18.12
Unexploded Ordnance (UXO) Technician II	21.92
Unexploded Ordnance (UXO) Technician III	26.27
Weather Observer, Combined Upper Air and Surface Programs (3)	20.09
Weather Observer, Senior (3)	26.41
Weather Observer, Upper Air (3)	20.09
Transportation/ Mobile Equipment Operation Occupations	
Bus Driver	12.20
Parking and Lot Attendant	6.74
Shuttle Bus Driver	10.54
Taxi Driver	9.23
Truckdriver, Heavy Truck	15.34
Truckdriver, Light Truck	11.90
Truckdriver, Medium Truck	13.32
Truckdriver, Tractor-Trailer	15.34

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: Life, accident, and health insurance plans, sick leave, pension plan, civic and personal leave, severance pay, and savings and thrift plans. Minimum employee contributions costing an average of \$2.56 per hour computed on the basis of all hours worked by service employees employed on the contract.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor 3 weeks after 8 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute any of the named holidays another day off with pay in accordance with a plan communi-

to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)

2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. rate of basic pay plus a night pay differential amounting to 10 percent of the rate basic pay.

3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employee (40 hours week) and Sunday is part of your regularly scheduled workweek, you are paid at your basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery. A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employee possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arm ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differentials.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either the terms of the Government contract, by the employer, by the state or local law, or the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) uniforms is an expense that may not be borne by an employee where such cost reduces hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost) reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (\$0.67 cents per day). However, in those instances where the uniforms furnished are "wash and wear" materials, may be routinely washed and dried with other personal garments and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

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REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See 4.6 (C) (vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation and computes a proposed rate).
- 2) After contract award, the contractor prepares a written report listing in order of classification title), a Federal grade equivalency (FGE) for each proposed classification), job description), and rationale for proposed wage rate), including information regarding the agreement or disagreement of the authorized representative employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 10 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of action, together with the agency's recommendations and pertinent information including position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b) Regulations 29 CFR Part 4).
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OFFEROR SUBMISSION PACKAGE

SOLICITATION: SP0600-02-R-0094

PROGRAM NUMBER: 6.2

PERFORMANCE PERIOD: OCTOBER 1, 2003 – SEPTEMBER 30, 2023
(PERFORMANCE PERIOD INCLUDES BASIC WITH THREE FIVE-YEAR OPTIONS TO RENEW)

TO BE TIMELY, OFFERS MUST BE RECEIVED AT THE
DEFENSE ENERGY SUPPORT CENTER
BY
SEPTEMBER 23, 2002 @ 1500 HOURS LOCAL TIME

INSTRUCTIONS:

1. One copy of this Offeror Submission Package must be returned to the Defense Energy Support Center as your offer. See Clause L17.02 for additional information to be submitted.
2. Be sure to check your offer prices in Section B for accuracy and legibility prior to submission. Initial all changes. **Sign and date the Standard Form 33 (SF33) in ink.**
3. If you are submitting your offer by facsimile, please limit your facsimile transmission to the contents of this Offer Submission Package and send a complete copy of the proposal by regular mail within ten (10) days after the solicitation's closing date. See Clause L2.11-1.
4. By submission of this package, you are stating that ALL terms and conditions of the entire solicitation are accepted and apply to your offer unless clearly stated on a separate sheet of paper.

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE 1 OF 107 PAGES	
2. CONTRACT NUMBER		3. SOLICITATION NUMBER SP0600-02-R-0094		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED August 21, 2002	
6. REQUISITION/PURCHASE NUMBER SP0600-03-0479		7. ISSUED BY Defense Energy Support Center 8725 John J. Kingman Road, Suite 2945 Ft. Belvoir, VA 22060-6222		CODE SP0600		8. ADDRESS OFFER TO (If other than Item 7) ATTN: BID CUSTODIAN, DESC-CPC, RM 3815 Defense Energy Support Center, 8725 John J. Kingman Road, Suite 4950, Fort Belvoir, VA 22060-6222 (Fax: 703-767-8506)	

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 1 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in DESC-CPC, Room 3815 until 1500 local time September 23, 2002

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME Beverly J. Williams	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS bjwilliams@desc.dla.mil
		AREA CODE (703)	NUMBER 767-9348	EXT.

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<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	6	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	85
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 180 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILIT	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)
15B. TELEPHONE NUMBER	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
AREA CODE	NUMBER	EXT.	

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)) <input type="checkbox"/> 41 U.S.C. 253(c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM
24. ADMINISTERED BY (If other than Item 7) CODE	25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)	27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	28. AWARD DATE

IMPORTANT - Award will be made on this form, or on Standard Form 26, or by other authorized official written notice.

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SECTION B – SUPPLIES/SERVICES AND PRICES/COST

B34.01 SERVICES TO BE FURNISHED AND PRICES (DESC FEB 1991)

The services to be furnished during the period specified herein and the unit prices are as follows:

The following terms and conditions are applicable to obtain the necessary services and facilities to receive, store, and ship one grade of Government-owned product (JP8) in the area of Doraville and Bremen, GA beginning 1 October 2003 for a five year multi-year contract with three, five-year options to renew.

Terms and conditions applicable to the requirement are as follows:

1. **AREA OF CONSIDERATION**: Defense Fuel Support Point services are required in the area of *Doraville and Bremen, GA* with a **Contractor-furnished connection to the Plantation Common Carrier Pipeline System and/or the Colonial Common Carrier Pipeline Systems**.
2. **TANKAGE REQUIRED**: 104,000 barrels shell capacity (99,000 barrels fill capacity). A minimum of two tanks is required, interconnected and isolated from other facilities and products handled within the tank farm. Clause L116.01, Data Required, applies.
3. **ESTIMATED THROUGHPUT**: 600,000 barrels for each 12-month contract period. Throughput is computed as follows: *receipts plus issues, divided by two*. The estimated throughput quantity does **not** include the initial fill of the terminal.
4. **GRADE OF PRODUCT**: Turbine Fuel Aviation Grade JP8.
5. **RECEIVING CAPABILITY**: Via a **Contractor-furnished** connection to the common carrier pipeline system (Plantation Pipeline and/or Colonial Pipeline System) at flow rates compatible with the pipeline system on a 24-hour per day, 7-day per week basis. **The Contractor's pipeline connection to the Common Carrier Pipeline System shall include a Contractor furnished temperature compensating pipeline meter assembly that is capable of measuring the quantity of product received. The purpose of the pipeline meter is to validate the quantity of product received. A dedicated system pipeline is desired, but not required. *The Contractor shall in cooperation with the Government establish a pricing formula whereby the Contractor shall reimburse the Government, for any loss of product, based on the metered quantity received minus the quantity delivered into the Government leased tanks. (i.e., if 10,000 barrels are received from the common carrier pipeline system, 10,000 barrels must be delivered into the Government leased tanks). The reconciliation shall be accomplished monthly.***

NOTE: Clause I1.01-4 provides the following Definitions:

Para. (c) The term **Isolated system and Segregated system** means a system that has a positive separation from other systems in a tank farm through means of blind flanges, locked double and bleed type valves, etc.

Para. (d) **Dedicated system** means a self contained, single product system with no pipeline that handles more than one product exclusively.

Para. (e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

6. **SHIPPING CAPABILITY**: Via Government-furnished transport trucks on an eight hour per day (5:00 am - 1:00 pm), five day per week basis.

7. CLAUSE B34.01, ANCILLARY FACILITIES:

a. **STORAGE TANKS AND FACILITIES**: All tanks and facilities must meet the minimum requirements of the current API standards, the NFPA codes, and all laws, regulations, etc., applicable to tanks and facilities of the type to be provided. Cone roof tanks with interior floating pans are preferred, however, floating roof tanks will be acceptable. Floating roof tanks will be equipped with roof drains, which prevent water from coming into contact with the fuel. The tanks and facilities will consist of one dedicated system capable of receiving, storing and shipping one-grade of Government-owned fuel. An isolated system in place of the preferred dedicated system is acceptable provided the requirements of Clause L116.01(d) are met.

b. **TRANSPORT TRUCK FACILITIES**: The Contractor's facilities must have transport truck loading capabilities and be equipped with a Scully system (or compatible). The Contractor's transport truck loading facilities must be capable of spotting and loading, a minimum, of four 8,500 gallon transport trucks per hour. The truck loading facilities shall be the type capable of providing transport truck loading that is in compliance with Federal, State, and local environmental laws and regulations based on the type of product being loaded. The transport truck loading facilities shall be equipped with a **temperature compensating meter** capable of accurately measuring the volume of product being loaded. The facility must also be capable of unloading transport trucks being returned after loading due to leaks or other problems. **The loading of Government-furnished tank trucks shall not be in competition with the Contractor's other terminal operations.**

c. **ADDITIVE INJECTION SYSTEMS**: An injection system (pump, blending tank, and ancillary connection facilities) for the injection of fuel additives (i.e., Fuel System Icing Inhibitor (FSII), Conductivity additive (SDA) into the product as follows (See Clauses F45.01, F45.03):

1. Injection of ASA for product received into the facility.
2. Injection of FSII during tank truck loading and shipping.
3. Injection of additives during tank-to-tank transfers.

d. **FILTRATION CAPABILITY**: The Contractor-furnished filtration system shall meet the requirements of API Bulletin 1581, Group II, Class B **to allow for filtration during receipt of product, truck loading and shipping operations, and tank-to-tank transfers**. The cost of replacement filter elements, and disposal of the used filter elements will be reimbursed by the Government upon presentation of supporting documentation and an invoice certified by the QSR. No fee or administrative charge will be added to the replacement filter element cost or the used filter element disposal costs.

e. **ADP EQUIPMENT**: The Contractor shall input inventory data of Government-owned product directly into the Defense Asynchronous Dial-up System (DADS)/Fuels Automated System (FAS) utilizing the Government provided DADS/FAS package. The Contractor shall provide the following **minimum** ADP equipment to be used for reporting inventory data utilizing the DADS/FAS package:

CERTIFICATION PACKAGE FOR SOLICITATION SP0600-02-R-0094

733Hz Processor
One 10 GB2 GB Hard Drive (minimum) and one 3 ½ inch floppy disk drive
Windows 2,000 Operating System
Modem 56 K
V710 Monitor
Mouse

Modem, 33.6 KB

CD-ROM Drive (eight speed or higher)
Printer/Printer paper/Printer Cartridges

The Contractor shall input inventory data of Government-owned product directly into the Government's Fuel automated System (FAS) utilizing the Government-furnished computer software. DESC will install the necessary software and provide training to a minimum of two Contractor personnel. Reference Clause I119.04 for additional information regarding the Government's inventory data requirement.

f. **DADS/FAS DATA ENTRY TELEPHONE SUPPORT**: The Contractor shall provide a dedicated commercial telephone line to be used for data entry into DADS/FAS. The installation charge and the monthly telephone bill will be reimbursed by the Government upon presentation of supporting documentation and an invoice certified by the QSR. No fee or administrative charge will be allowed to be added to the telephone bill.

g. **BEST COMMERCIAL PRACTICES**: In the absence of any contract provision or reference to a method, specification, or other instruction, the Contractor shall perform all services hereunder in accordance with the best commercial practices

LINE ITEM 1001 (MUCC): The prices for the services and facilities to be provided during the performance of the five year period (1 OCT 2003 through 30 SEP 2008) includes the following:

TANK NUMBER	TANK TYPE/PRODUCT	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>		TANK PER MONTH
				(PRORATED FOR PART
				MONTHS)(INCLUDES
				INITIAL FILL & FINAL
				<u>SHIPMENT</u>

LINE ITEM 2001 (MUCC)(1st Option to Renew): The prices for the services and facilities to be provided during the performance of the second five-year period (1 OCT 2008 through 30 SEP 2013) includes the following:

TANK NUMBER	TANK TYPE/PRODUCT	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>		TANK PER MONTH
				(PRORATED FOR PART
				MONTHS)(INCLUDES
				INITIAL FILL & FINAL
				<u>SHIPMENT</u>

CERTIFICATION PACKAGE FOR SOLICITATION SP0600-02-R-0094

LINE ITEM 3001 (MUCC)(2nd Option to Renew): The prices for the services and facilities to be provided during the performance of the third five-year period (1 OCT 2013 through 30 SEP 2018) includes the following:

TANK NUMBER	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
TANK TYPE/PRODUCT			TANK PER MONTH
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	(PRORATED FOR PART
			MONTHS)(INCLUDES
			INITIAL FILL & FINAL
			<u>SHIPMENT</u>

LINE ITEM 4001 (MUCC)(3rd Option to Renew): The prices for the services and facilities to be provided during the performance of the fourth and final five-year period (1 OCT 2018 through 30 SEP 2023) includes the following:

TANK NUMBER	SHELL CAPACITY	FILL CAPACITY	USE CHARGE PER
TANK TYPE/PRODUCT			TANK PER MONTH
<u>TO BE STORED</u>	<u>(BARRELS)</u>	<u>(BARRELS)</u>	(PRORATED FOR PART
			MONTHS)(INCLUDES
			INITIAL FILL & FINAL
			<u>SHIPMENT</u>

SUBLINE ITEM 1001AA

For the first 600,000 barrels (or one times the storage capacity offered) of product received after initial fill, per year or prorated for part thereof for any part year that the use of the storage is limited to a period of less than one yearNO ADDITIONAL CHARGE (Included in Tankage charge)

SUBLINE ITEM 1001AB

For the first 600,000 barrels (or one times the storage capacity offered) of product loaded and shipped from storage prior to final shipment, per year or prorated for part thereof for any part year that the use of the storage is limited to a period of less than one yearNO ADDITIONAL CHARGE (Included in Tankage charge)

SUBLINE ITEM 1001AC: (INCLUDE ANY OTHER CHARGES THAT WOULD APPLY THAT ARE NOT INCLUDED UNDER LINE ITEM 1001 OR IN THE SUBLINE ITEMS BELOW):

SUBLINE ITEM 1002 (EXTP)

Excess throughput: In excess of 600,000 barrels of throughput per year or prorated part thereof for any part year that the use of storage is limited to a period of less than one (1) year, the Contractor will be reimbursed \$ _____ (multi-year) per barrel. Throughput is clearly defined in Clause B34.01 under Estimated Throughput.

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SUBLINE ITEM 1003 (IFSI)

Injection Fuel System Icing Inhibitor (FSII): The government will normally purchase and provide FSII. In those cases where the Contractor is required to purchase the additive, the Government will reimburse the contractor for direct out-of-pocket costs incurred in acquiring such additive (See Clause F45.03). The Contractor will be reimbursed \$ _____ (multi-year) per barrel for injecting FSII additive.

SUBLINE ITEM 1004 (IACA)

Injection of Anti-Corrosion Additive: The Contractor will be reimbursed \$ _____ (multi-year) per barrel for injecting Anti-Corrosion additive.

SUBLINE ITEM 1005 (OVRT)

Services other than normal working hours shall be ordered for this subline item in accordance with Clause I16.01 and Clause G148.05. The overtime rates listed below shall apply, unless altered by union agreement or Government regulations. The Contracting Officer shall be notified by the Contractor of any change to these rates, which will be supported, with copies of the appropriate union agreement or formal Government notice.

EMPLOYEE CLASSIFICATION

OVERTIME RATE

Show Computation for the overtime rate of each Classification as follows:

Category

Base Rate times 1.5

Plus Payroll Taxes & Insurance (specify rate)

Subtotal

Plus Profit (specify rate)

Total Overtime Rate

SUBLINE ITEM 1006 (COMM)

- a. FAS Telephone Line: The Contractor will be reimbursed for direct out-of-pocket costs only for FAS Telephone Line. Invoices for reimbursement shall be certified by the QSR and include supporting documentation. No fee or administrative charge shall be added.
- b. Telephone for the QSR: The Contractor will be reimbursed for direct out-of-pocket costs for the QSR telephone expenses. Invoices for reimbursement shall be submitted to the QSR for certification and include supporting documentation.

SUBLINE ITEM 1007 (FILT)

Filters: The government shall reimburse the Contractor for the cost of replacement and disposal of used filters. The contractor shall be responsible for furnishing and providing at the contractor's expense all maintenance requirements of the filtration system. Contractor will submit an invoice to the COR for certification, for replacement and disposal costs only. No fee or administration charge shall be added.

SECTION C - DESCRIPTION/SPEC/WORK STATEMENT

C19.07 SAMPLING AND TESTING OF PETROLEUM PRODUCTS (STORAGE) (DESC OCT 2001)

(a) **SAMPLING.** The samples identified in the solicitation attachment entitled MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING are a required part of the services to be provided. The Contractor must provide these samples using qualified personnel, facilities, and equipment on-site and shall include all associated costs in the monthly service charge. These on-site resources may be provided by Contractor personnel or by a commercial source acting on behalf of the Contractor. The Quality Representative will not be responsible for taking any samples for the Contractor. All samples must be taken in accordance with ASTM D 4057, Standard Practice for Manual Sampling of Petroleum and Petroleum Products (API Manual of Petroleum Measurement Standards (MPMS), Chapter 8.1).

(b) **TESTING.** The tests identified in the solicitation attachment entitled MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING are a required part of the services to be provided. Those tests identified in the attachment which are part of a higher order analysis (defined as follows: Composite Samples, Storage Tanks After Receipt, Interface Mixture, Dormant Stocks, and Individual Tests, including particulate contamination) shall be provided by the Contractor using one of the following options (the Contractor shall check the appropriate box below):

☐ The Contractor will perform the tests using its own qualified personnel, facilities, and equipment. (All costs for this service are to be included in the monthly service charge.)

☐ The Contractor will not perform the tests using its own personnel, but will provide on a seven days per week, 24 hours per day basis, its own facilities and equipment for testing of product by Government personnel. (All costs for this service are to be included in the monthly service charge.)

☐ The Contractor will not provide its own personnel, facilities, or equipment. Instead, the Contractor will, within 24 hours after sampling, transport any sample(s) to a commercial laboratory approved by the Government and arrange for that commercial laboratory to perform all the

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required tests. The Government, at its option, may direct that samples be tested at a Government laboratory under contract to the Government. In this case, transport of such samples is still the responsibility of the Contractor. (The Government will reimburse the Contractor for the actual costs of the tests performed by their commercial laboratory. All other associated costs must be included in the monthly service charge.)

All other tests found in the above referenced attachment, which are not part of a higher order analysis, shall be provided in accordance with the CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) clause.

(c) All facilities and equipment to be provided, whether that of a Contractor or a commercial laboratory, must conform to the standards for such facilities and equipment established by the Occupational Safety and Health Act and the National Fire Protection Association or local regulations, whichever is more stringent.

(DESC 52.211-9FL5)

SECTION F - DELIVERIES OR PERFORMANCE

F1.04 GENERAL RECEIVING AND STORING CONDITIONS (DESC OCT 1997)

(a) Notice will be furnished to the Contractor of upcoming product receipts. The notice will include the method of receipt, the source, grade, or type of product, and any special instructions.

(b) The Contractor shall transfer and store each grade of product in a manner that preserves the quality of the product and will prevent contamination. The responsibility for preventing contamination rests with the Contractor.

(c) When requested, the Contractor will transfer product between tanks to consolidate like types or grades.

(d) Whenever a product is to be removed from a tank to accomplish cleaning or repair of the tank, or to change product, or to effect the release of the tank to the Contractor, the Contractor shall strip such tank to preclude loss of recoverable fuel. The Contractor shall provide the Quality Assurance Representative (QAR) with information pertaining to the amount of fuel deemed unrecoverable, the reason why the fuel cannot be recovered, and an analysis of the unrecovered fuel quality. All unrecoverable tank bottoms/line fill quantities will be reported to the Property Administrator for disposition instructions. Contaminated/off-specification product will be reported to the QAR in order to obtain disposition instructions. Tanks out of service for repair shall be removed from revenue until such time as they are returned to Government Service. Tanks out of service for cleaning shall be governed by the INSPECTION AND CLEANING OF BULK PETROLEUM STORAGE TANKS clause.

(e) Custody of product received by pipeline, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the flange connecting the carrier's pipeline and the Contractor's pipeline.

(f) Custody of product received by transport truck, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes from the transport truck discharge hoses into the Contractor's receiving facilities.

(g) Custody of product received by tank car, and risk of loss thereof, shall pass from the carrier to the Contractor when the tank car comes to rest on the Contractor's siding.

(h) Custody of product received from tanker or barge, and risk of loss thereof, shall pass from the carrier to the Contractor when the fuel passes the vessel's permanent hose connection.

(i) The Contractor shall be held accountable for demurrage charges arising from delay(s) in receipt by tank cars or transport trucks, except when the delay(s) are caused by reason beyond the control and without the fault or negligence of the Contractor and its subcontractors.

(j) The Contractor will prepare and process the following certificate on bond paper when it is necessary to upgrade or downgrade a product:

I certify that _____ gallons of _____ have been upgraded/downgraded
(quantity) (product)

from _____ to _____. This action was required because
(product) (product)

(enter reason for the action)

Signature of Contractor Representative

[] I concur with the Contractor's certification.

[] I do not concur with the Contractor's certification for the following reasons:

Signature of Quality Representative

(A receipt transaction will be reflected on the monthly stock report for the gain in product, with a shipment being reflected for the losing product.)

(k) The following subparagraphs apply only to barges and tankers.

(1) SCHEDULED ARRIVAL DATE AND BASIC ALLOWED LAYTIME.

(i) The Contractor shall be notified in advance of the scheduled arrival date. Each notice will specify the quantity to be delivered, the cargo number, the name of the vessel, and the scheduled arrival date. For tankers, the notice will also include the size of the vessel and the expected time of arrival. For tankers, the notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date; for barges, at least 48 hours in advance of the scheduled arrival date. The Government will provide the maximum notice practicable when the anticipated vessel transit time from the loading point is less than the 72/48 hours. Changes in the scheduled arrival date that will provide less than the 48 hours notice for barges and the 72 hours notice for tankers will require the verbal approval of the Contractor. This verbal approval is to be confirmed in writing as soon as practicable.

(ii) The Contractor shall provide a reachable berth, free of charge, where the vessel can be safely moored and afloat with necessary access thereto as soon as possible, but no later than, for barges, within 3 hours after issue of notice of readiness to unload, and, for tankers, within 6 hours after issue of notice of readiness, PROVIDED --

(A) If the vessel is tendered for unloading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be unloaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

(B) If the vessel is tendered for unloading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be unloaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available.

(iii) Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

(iv) Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until unloading of the barge or tanker is completed and hoses have been disconnected.

(v) Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

(A) **FOR BARGES:** One hour for each 2,000 barrels of product to be unloaded.

(B) **FOR TANKERS:** Thirty-six hours of discharge of a full vessel cargo. When partial vessel cargoes are to be unloaded, the 36 hours will be prorated based on quantities discharged in each port.

(vi) Hoses and loading arms for unloading a barge or tanker will be furnished, connected, and disconnected by the Contractor.

(2) INCREASES TO BASIC ALLOWED LAYTIME.

(i) If, after laytime commences, the conditions or facilities of the barge or tanker to be unloaded do not permit unloading, basic allowed laytime shall be increased by the duration of the delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

(iii) If the vessel owner's or operator's regulations prohibit unloading at any time after laytime has commenced, the lost time shall be added to the basic allowed laytime.

(iv) If, for any reason, the Contractor is delayed in unloading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

(v) There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

(vi) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

(3) PAYMENT OF DEMURRAGE. For all hours of laytime which elapse in excess of the basic allowed laytime for unloading provided for by subparagraph (k)(1)(v), or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

(i) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

(ii) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

(DESC 52.211-9FJ5)

F76 CONTRACT PERIOD/PERFORMANCE REQUIREMENTS (STORAGE) (DESC DEC 1991)

During the contract period, _____ through _____, the Contractor shall provide petroleum storage facilities and services at the following location:

(Street address)

(City/State/Zip)

(DESC 52.242-9FA1)

SECTION G - CONTRACT ADMINISTRATION

G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DESC DEC 1999)

Remittances shall be mailed only at the Government's option or where an exception to payment by Electronic Funds Transfer (EFT) applies. (See the PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION or the PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause.)

Offeror shall indicate below the complete mailing address (including the nine-digit zip code) to which remittances should be mailed if such address is other than that shown in Block 15a (Standard Form (SF) 33) for noncommercial items or Block 17a (SF 1449) for commercial items. In addition, if offeror did not incorporate its nine-digit zip code in the address shown in Block 15a of the SF 33 or in Block 17a of the SF 1449, the offeror shall enter it below:

(a) Payee Name (Contractor): _____
(DO NOT EXCEED 25 CHARACTERS)

(b) Check Remittance Address:

(DO NOT EXCEED 30 CHARACTERS PER LINE)

(c) Narrative Information (special instructions).

(DO NOT EXCEED 153 CHARACTERS)

(DESC 52.232-9F55)

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K1.01-5 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that--

(a) It--

[] has
[] has not--

participated in a previous contract or subcontract subject to the EQUAL OPPORTUNITY clause of this solicitation;

(b) It--

- ☐ has
☐ has not--

filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(FAR 52.222-22)

K1.01-6 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

THE FAR REPRESENTATION IN THE FOLLOWING PARAGRAPH SHALL BE COMPLETED BY EACH OFFEROR WHOSE OFFER IS \$50,000 OR MORE AND WHO HAS 50 OR MORE EMPLOYEES.

This representation--

- ☐ DOES APPLY.
☐ DOES NOT APPLY.

The offeror represents that--

(a) It--

- ☐ has developed and has on file
☐ has not developed and does not have on file--

at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It--

☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(FAR 52.222-25)

K1.01-11 SMALL BUSINESS PROGRAM REPRESENTATIONS (ALTS I/II) (OCT 2000/OCT 2000/OCT 2000)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 493110.

(2) The small business size standard is \$18.5 million.

(3) The small business size standard for a concern that submits an offer in its own name, other than on a construction or service contract, but that proposes to furnish a product that it did not itself manufacture, is 500 employees.

(b) **REPRESENTATIONS.**

(1) The offeror represents as part of its offer that it--

- ☐ is,
☐ is not

a small business concern.

(2) **(Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)** The offeror represents, for general statistical purposes, that it--

- ☐ is,
☐ is not

a small disadvantaged business concern as defined in 13 CFR 124.1002.

CERTIFICATION PACKAGE FOR SOLICITATION SP0600-02-R-0094

(3) **(Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)** The offeror represents as part of its offer that it--

☐ is,
☐ is not

a women-owned small business concern.

(4) **(Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)** The offeror represents, as part of its offer, that it—

☐ is
☐ is not

a veteran-owned small business concern.

(5) **(Complete only if offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.)** The offeror represents, as part of its offer, that it—

☐ is
☐ is not

a service-disabled veteran-owned small business concern.

(6) **(Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.)** The offeror represents, as part of its offer, that--

(i) It--

☐ is
☐ is not

a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It--

☐ is
☐ is not

a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in subdivision (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. **The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:**

_____	_____
_____	_____
_____	_____
_____	_____

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

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(7) (Complete if the offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.) The offeror shall check the category in which its ownership falls:

- ☐ Black American.
- ☐ Hispanic American.
- ☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- ☐ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- ☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- ☐ Individual/concern, other than one of the preceding.

(c) **DEFINITIONS.** As used in this provision--

(1) **Service-disabled veteran-owned small business concern** means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) **Service-disabled veteran** means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service connected, as defined in 38 U.S.C. 101(16).

(3) **Small business concern** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

(4) **Veteran-owned small business concern** means a small business concern--

(i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) The management and daily business operations of which are controlled by one or more veterans.

(5) **Women-owned small business concern** means a small business concern--

(i) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) **NOTICE.**

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall-

(i) Be punished by imposition of a fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(FAR 52.219-1/Alts I/II)

K7 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUN 2000)

NOTE: This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

CERTIFICATION PACKAGE FOR SOLICITATION SP0600-02-R-0094

I. DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts that are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) **CERTIFICATE OF CONCURRENT SUBMISSION OF DISCLOSURE STATEMENT.**

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form Number CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and address of cognizant ACO or Federal official where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) **CERTIFICATE OF PREVIOUSLY SUBMITTED DISCLOSURE STATEMENT.**

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and address of cognizant ACO or Federal official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) **CERTIFICATE OF MONETARY EXEMPTION.**

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) **CERTIFICATE OF INTERIM EXEMPTION.**

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause in lieu of the COST ACCOUNTING STANDARDS clause.

☐ The offeror hereby claims an exemption from the COST ACCOUNTING STANDARDS clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the COST ACCOUNTING STANDARDS clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

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[] YES

[] NO

(FAR 52.230-1)

K15 RELEASE OF UNIT PRICES (DESC JUL 2002)

(a) The Defense Energy Support Center (DESC) has routinely released the unit prices of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. These unit prices are the bottom-line price per unit of product. Unit price may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors. This information has been released pursuant to the Freedom of Information Act in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offerors, and other summary formats. Updated contract prices are also publicly posted on the DESC website throughout the delivery period of some contracts. Offerors have not objected to DESC's routine release or disclosure of these unit prices.

(b) DESC does not believe that release of unit prices after award causes any competitive harm. If the offeror disagrees, the offeror must provide a detailed explanation of how it will suffer competitive harm from the release of unit prices after award. The competitive harm explanation is required if the offeror either agrees to release award prices only, or does not agree with releasing any unit prices. This detailed explanation must be provided with the initial offer. DESC will use this information to determine if there is a sufficient basis to withhold the unit price after award. The offeror's indication of disagreement with release of unit prices and/or failure to provide a detailed explanation of competitive harm with the initial offer may result in release of unit prices after award. Failure to agree to the release of unit prices shall not be a factor considered in contract award.

(c) Offerors shall indicate their agreement below to the release of unit prices after award. **NOTE:** The offeror's agreement or disagreement with release of unit prices must apply to all items and may not be split to apply differently to different line items.

[] Offeror **AGREES** to the release of unit prices.

[] Offeror **AGREES** to the release of unit prices, but only in the event of contract award. Detailed rationale as to why the release of unit prices of unsuccessful offers would cause competitive harm is attached.

[] Offeror **DOES NOT AGREE** to the release of unit prices. Detailed rationale as to why the release of unit prices would cause competitive harm is attached.

(DESC 52.224-9F25)

K15.03 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

_____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(FAR 52.203-2)

K33.01 AUTHORIZED NEGOTIATORS (DESC JAN 1998)

The first page of the offer must show names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate with the Government on the offeror's behalf in connection with this solicitation. The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

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(DESC 52.215-9F28)

K45 FACSIMILE INVOICING (COCO/GOCO) (DESC SEP 1988)

- (a) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times.
(b) Offeror shall indicate whether or not s/he intends to submit invoices via FAX:

[] YES [] NO

- (c) See the SUBMISSION OF INVOICES BY FACSIMILE clause for FAX invoicing procedures.

(DESC 52.232-9F05)

K88 TAXPAYER IDENTIFICATION (OCT 1998)

(a) DEFINITIONS.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) TAXPAYER IDENTIFICATION NUMBER (TIN).

[] TIN: _____.

[] TIN has been applied for.

[] TIN is not required because--

[] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

[] Offeror is an agency or instrumentality of a foreign government;

[] Offeror is an agency or instrumentality of the Federal Government.

(e) TYPE OF ORGANIZATION.

[] Sole proprietorship;

[] Partnership;

[] Corporate entity (not tax-exempt);

[] Corporate entity (tax-exempt);

[] Government entity (Federal, State, or local);

[] International organization per 26 CFR 1.6049-4;

[] Other _____.

(f) COMMON PARENT.

[] Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

[] Name and TIN of common parent:

Name: _____

TIN: _____

(FAR 52.204-3)

K94 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (APR 2001)

- (a) (1) The offeror certifies, to the best of its knowledge and belief, that--
(i) The offeror and/or any of its Principals--

(A) [] are,
[] are not

presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

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[This paragraph (B) language is stayed indefinitely. Please use paragraph (D) below.]

- (B) ☐ have,
☐ have not

within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

[This paragraph (C) language is stayed indefinitely. Please use paragraph (E) below.]

- (C) ☐ are,
☐ are not

presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

- (D) ☐ have,
☐ have not

within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

- (E) ☐ are,
☐ are not

presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(D) of this provision.

[This subparagraph (a)(1)(ii) is stayed indefinitely.]

- (ii) (A) The offeror, aside from the offenses enumerated in subdivisions (a)(1)(i)(A), (B), and (C) of this provision—
☐ has,
☐ has not

within the past three-years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws—

- (a) Been convicted of a Federal or State felony (or has any Federal or State felony indictments currently pending against them); or
(b) Had a Federal court judgment in a civil case brought by the United States rendered against them; or
(c) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.
(B) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer; and

- (iii) The offeror—

- ☐ has,
☐ has not

within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) **Principals**, for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES, AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the offeror nonresponsible.

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(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(FAR 52.209-5)